

purposes; to the Committee on the Judiciary.

By Mr. COCHRAN (for himself, Mr. KENNEDY, Mr. LEVIN, and Mr. VOINOVICH):

S. 1029. A bill to amend title III of the Elementary and Secondary Education Act of 1965 to provide for digital education partnerships; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 1030. A bill to provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws; to the Committee on Energy and Natural Resources.

By Mr. DURBIN:

S. 1031. A bill to amend the National Forest Management Act of 1976 to prohibit below-cost timber sales in the Shawnee National Forest; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BROWNBACK (for himself, Mr. HELMS, Mr. BURNS, Mr. ROBERTS, Mr. FITZGERALD, and Mr. LUGAR):

S. 1032. A bill to permit ships built in foreign countries to engage in coastwise trade in the transport of certain products; to the Committee on Commerce, Science, and Transportation.

By Mrs. FEINSTEIN:

S. 1033. A bill to amend title IV of the Social Security Act to coordinate the penalty for the failure of a State to operate a State child support disbursement unit with the alternative penalty procedure for failures to meet data processing requirements; to the Committee on Finance.

By Mr. AKAKA (for himself, Ms. SNOWE, Mrs. MURRAY, and Ms. COLLINS):

S. 1034. A bill to amend title XVIII of the Social Security Act to increase the amount of payment under the medicare program for pap smear laboratory tests; to the Committee on Finance.

By Mr. FEINGOLD (for himself and Mr. BINGAMAN):

S. 1035. A bill to establish a program to provide grants to expand the availability of public health dentistry programs in medically underserved areas, health professional shortage areas, and other Federally-defined areas that lack primary dental services; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KOHL (for himself, Mr. DODD, and Mr. ROCKEFELLER):

S. 1036. A bill to amend parts A and D of title IV of the Social Security Act to give States the option to pass through directly to a family receiving assistance under the temporary assistance to needy families program all child support collected by the State and the option to disregard any child support that the family receives in determining a family's eligibility for, or amount of, assistance under that program; to the Committee on Finance.

By Mrs. BOXER:

S. 1037. A bill to amend the Toxic Substances Control Act to provide for a gradual reduction in the use of methyl tertiary butyl ether, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GRASSLEY (for himself, Mr. KERREY, Mr. CONRAD, and Mr. DASCHLE):

S. 1038. A bill to amend the Internal Revenue Code of 1986 to exempt small issue

bonds for agriculture from the State volume cap; to the Committee on Finance.

By Mr. NICKLES:

S. 1039. A bill for the relief of Renato Rosetti; to the Committee on the Judiciary.

By Mr. SHELBY (for himself and Mr. CRAIG):

S. 1040. A bill to promote freedom, fairness, and economic opportunity for families by reducing the power and reach of the Federal establishment; to the Committee on Finance.

By Mr. FRIST:

S. 1041. A bill to amend title 38, United States Code, to permit certain members of the Armed Forces not currently participating in the Montgomery GI Bill educational assistance program to participate in that program, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. HUTCHISON (for herself, Mr. BREAUX, Mr. DOMENICI, Mr. BINGAMAN, Mr. LOTT, Ms. LANDRIEU, Mr. COCHRAN, Mr. THOMAS, Mr. BROWNBACK, and Mr. GRAMM):

S. 1042. A bill to amend the Internal Revenue Code of 1986 to encourage domestic oil and gas production, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN:

S. 1043. A bill to provide freedom from regulation by the Federal Communications Commission for the Internet; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY:

S. 1044. A bill to require coverage for colorectal cancer screenings; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. KERREY, and Mr. ROBB):

S. 1045. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on persons who acquire structured settlement payments in factoring transactions, and for other purposes; to the Committee on Finance.

By Mr. REED:

S. 1046. A bill to amend title V of the Public Health Service Act to revise and extend certain programs under the authority of the Substance Abuse and Mental Health Services Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MURKOWSKI (for himself and Mr. BINGAMAN) (by request):

S. 1047. A bill to provide for a more competitive electric power industry, and for other purposes; to the Committee on Energy and Natural Resources.

S. 1048. A bill to provide for a more competitive electric power industry, and for other purposes; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 1049. A bill to improve the administration of oil and gas leases on Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

S. 1050. A bill to amend the Internal Revenue Code of 1986 to provide incentives for gas and oil producers, and for other purposes; to the Committee on Finance.

By Mr. MURKOWSKI (for himself and Mr. BINGAMAN) (by request):

S. 1051. A bill to amend the Energy Policy and Conservation Act to manage the Strategic Petroleum Reserve more effectively, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. AKAKA, and Mr. BINGAMAN):

S. 1052. A bill to implement further the Act (Public Law 94-241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FITZGERALD (for himself, Mr. GRASSLEY, Mr. ROBERTS, and Mr. ASHCROFT):

S. Res. 101. A resolution expressing the sense of the Senate on agricultural trade negotiations; to the Committee on Finance.

By Mr. LOTT:

S. Res. 102. A resolution appointing Patricia Mack Bryan as Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1028. A bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law, and for other purposes; to the Committee on the Judiciary.

CITIZENS ACCESS TO JUSTICE ACT OF 1999

Mr. HATCH. Mr. President, I am pleased today to introduce the "Citizens Access to Justice Act of 1999," or CAJA. More precisely, I am reintroducing the same bill that was voted out of the Judiciary Committee last Congress, but was a victim of a filibuster by the left.

Why am I doing this? Some may say that it is fruitless. But even though Senator LANDRIEU, other supporters of the bill, and myself, were unsuccessful last Congress in passing this much needed bill, property owners of Utah, and, indeed, of all of our States, still feel the heavy hand of the government erode their right to hold and enjoy private property. To make matters worse, many of these property owners often are unable to safeguard their rights because they effectively are denied access to federal courts. Our bill was designed to rectify this problem. Let me explain.

In a society based upon the "rule of law," the ability to protect property and other rights is of paramount importance. Indeed, it was Chief Justice John Marshall, who in the seminal 1803 case of *Marbury v. Madison*, observed that the "government of the United States has been emphatically termed a government of laws, and not of men. It will cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right."

Despite this core belief of John Marshall and other Founders, the ability of property owners to vindicate their rights in court today is being frustrated by localities which sometimes create labyrinths of administrative hurdles that property owners must jump through before being able to bring a claim in Federal court to vindicate their federal constitutional rights. They are also hampered by the overlapping and confusing jurisdiction of the Court of Federal Claims and the federal district courts over Fifth Amendment property rights claims. CAJA seeks to remedy these situations.

The purpose of the bill is, therefore, at its root, primarily one of fostering fundamental fairness and simple justice for the many millions of Americans who possess or own property. Many citizens who attempt to protect their property rights guaranteed by the Fifth Amendment of the Constitution are barred from the doors of the federal courthouse.

In situations where other than Fifth Amendment property rights are sought to be enforced—such as First Amendment rights, for example—aggrieved parties generally file in a single federal forum to obtain the full range of remedies available to litigants to make them whole. In property rights cases, property owners may have to file in different courts for different types of remedies. This is expensive and wasteful.

Moreover, unlike situations where other constitutional rights are sought to be enforced, property owners seeking to enforce their Fifth Amendment rights must first exhaust all state remedies with the result that they may have to wait for over a decade before their rights are allowed to be vindicated in federal court—if they get there at all. CAJA addresses this problem of providing property owners fair access to federal courts to vindicate their federal constitutional rights.

Let me be more specific. The bill has two main provisions to accomplish this end. The first is to provide private property owners claiming a violation of the Fifth Amendment's Taking Clause some certainty as to when they may file the claim in federal court. This is accomplished by addressing the procedural hurdles of the ripeness and abstention doctrines which currently prevent them from having fair and equal access to federal court. The bill defines when a final agency decision has occurred for purposes of meeting the ripeness requirement and prohibits a federal judge from abstaining from or relinquishing jurisdiction when the case does not allege any violation of a state law, right, or privilege. Thus, the bill serves as a vehicle for overcoming federal judicial reluctance to review takings claims based on the ripeness and abstention doctrines.

The second provision clarifies the jurisdiction between the Court of Federal

Claims in Washington, D.C., and the regional federal district courts over federal Fifth Amendment takings claims. The "Tucker Act," which waives the sovereign immunity of the United States by granting the Court of Federal Claims jurisdiction to entertain monetary claims against the United States, actually complicates the ability of a property owner to vindicate the right to just compensation for a government action that has caused a taking. The law currently forces a property owner to elect between equitable relief in the federal district court and monetary relief in the Court of Federal Claims. Further difficulty arises when the law is used by the government to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims, and is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should first seek equitable relief in the district court.

This division between law and equity is archaic and results in burdensome delays as property owners who seek both types of relief are "shuffled" from one court to the other to determine which court is the proper forum for review. The bill resolves this matter by simply giving both courts concurrent jurisdiction over takings claims, thus allowing both legal and equitable relief to be granted in a single forum.

I must emphasize that the bill does not create any substantive rights. The definition of property, as well as what constitutes a taking under the Just Compensation Clause of the Fifth Amendment, is left to the courts to define. The bill would not change existing case law's ad hoc, case-by-case definition of regulatory takings. Instead, it would provide a procedural fix to the litigation muddle that delays and increases the cost of litigating a Fifth Amendment taking case. All the bill does is to provide for fair procedures to allow property owners the means to safeguard their rights by having their day in court.

Mr. President, I am very well aware that this bill has been opposed by the Department of Justice, many localities, some interstate governmental associations, and certain environmental groups. I believe that there concerns that the bill would hinder local prerogatives and significantly increase the amount of federal litigation are highly overstated. The bill is carefully drafted to ensure that aggrieved property owners must first seek solutions on the local or state level before filing a federal claim. It just sets a limit on how many procedures localities may interpose.

Moreover, I seriously doubt that there will be a rush of new litigation, as some have contended, flooding federal courts. That there will be no significant increase was the conclusion of

the nonpartisan Congressional Budget Office in its study of last year's bill.

It is extremely difficult to prove a takings claim, and this bill does not in any way redefine what constitutes a taking. These claims are also expensive to bring. Paradoxically, localities' need to defend federal actions may be lessened by the bill because localities already must litigate property rights claims on federal ripeness grounds, which take years to resolve.

Let me restate this. By providing certainty on the ripeness issue, the bill may very well reduce litigation costs to localities. Substantive takings claims, unless they are likely to prevail on the merits, are simply too hard to prove and too expensive to bring in federal court. And the issue of ripeness will have been removed by the bill from the already crowded court dockets.

Mr. President, it is interesting to note that once many state officials, localities, and state and trade organizations really examine the measure, many become the bill's supporters. Those supporting the bill and increased vigilance in the property rights arena include the Governors of Tennessee, Wisconsin, New Mexico, and North Dakota.

They also include the American Legislative Exchange Council, which represents over 3000 state legislators, and trade groups such as America's Community Bankers, the National Mortgage Association of America, the National Association of Home Builders, the National Association of Realtors, and the National Federation of Independent Businesses, the organ of small business in the United States. They also include agricultural interests such as the American Farm Bureau, the American Forest and Paper Association, the National Cattlemen's Beef Association, and the National Grange.

Just as important, let me point out that 133 House sponsors of the last year's House passed bill were former state and local officeholders. I do not believe that they would have voted for the bill if the bill would conflict with local sovereignty.

Mr. President, we have bent over backwards trying to accommodate those expressing concerns about the bill which passed out of the Senate Judiciary Committee last year. We met with city mayors, representatives of local governmental organizations, attorneys generals, and religious groups, to name just a few.

We held group meetings and asked for suggestions and changes to the bill which would alleviate opposition and concerns. These changes are incorporated in the present bill. These changes by and large alleviate municipalities' concerns that the bill would become a vehicle for frivolous and novel suits. They remove any incentive the bill may have for property owners

to file specious suits against localities. They foster negotiations to resolve problems. And, they recognize the right of the states and localities to abate nuisances without having to pay compensation.

But I am under no illusion. I understand that many localities still oppose the bill. The process that we so fruitfully began last year should be continued. It is my hope that groups supporting property rights and those localities and governmental entities that oppose the bill should meet as soon as practicable. Let each side discuss their problems and concerns. I believe—in the best tradition of American pragmatic know how—that a solution to this problem can be worked out.

The bill I introduce today is a model. But it is a model that can be improved. I assure all those concerned that we will consider all reasonable suggested changes to the bill. After all, it is not pride of authorship that is important. What is important, instead, is a viable solution to a vexing and unfair problem.

Mr. President, I ask unanimous consent that the entire text of the bill be inserted in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1028

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Citizens Access to Justice Act of 1999".

SEC. 2. FINDINGS.

Congress finds that—

(1) property rights have been abrogated by the application of laws, regulations, and other actions by all levels of government that adversely affect the value and the ability to make reasonable use of private property;

(2) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineate the jurisdiction of courts hearing property rights claims, frustrate the ability of a property owner to obtain full relief for violation founded upon the fifth and fourteenth amendments of the United States Constitution;

(3) current law—

(A) has no sound basis for splitting jurisdiction between two courts in cases where constitutionally protected property rights are at stake;

(B) adds to the complexity and cost of takings and litigation, adversely affecting taxpayers and property owners;

(C) forces a property owner, who seeks just compensation from the Federal Government, to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;

(D) is used to urge dismissal in the district court in complaints against the Federal Government, on the ground that the plaintiff should seek just compensation in the Court of Federal Claims;

(E) is used to urge dismissal in the Court of Federal Claims in complaints against the

Federal Government, on the ground that the plaintiff should seek equitable relief in district court; and

(F) forces a property owner to first pay to litigate an action in a State court, before a Federal judge can decide whether local government has denied property rights safeguarded by the United States Constitution;

(4) property owners cannot fully vindicate property rights in one lawsuit and their claims may be time barred in a subsequent action;

(5) property owners should be able to fully recover for a taking of their private property in one court;

(6) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights in complaints against the Federal Government;

(7) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed;

(8) Federal and local authorities, through complex, costly, repetitive and unconstitutional permitting, variance, and licensing procedures, have denied property owners their fifth and fourteenth amendment rights under the United States Constitution to the use, enjoyment, and disposition of, and exclusion of others from, their property, and to safeguard those rights, there is a need to determine what constitutes a final decision of an agency in order to allow claimants the ability to protect their property rights in a court of law;

(9) a Federal judge should decide the merits of cases where a property owner seeks redress solely for infringements of rights safeguarded by the United States Constitution, and where no claim of a violation of State law is alleged; and

(10) certain provisions of sections 1343, 1346, and 1491 of title 28, United States Code, should be amended to clarify when a claim for redress of constitutionally protected property rights is sufficiently ripe so a Federal judge may decide the merits of the allegations.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth and fourteenth amendments to the United States Constitution and this Act;

(2) amend the Tucker Act, including the repeal of section 1500 of title 28, United States Code;

(3) rectify the unduly onerous and expensive requirement that an owner of real property, seeking redress under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) for the infringement of property rights protected by the fifth and fourteenth amendments of the United States Constitution, is required to first litigate Federal constitutional issues in a State court before obtaining access to the Federal courts;

(4) provide for uniformity in the application of the ripeness doctrine in cases where constitutional rights to use and enjoy real property are allegedly infringed, by providing that a final agency decision may be adjudicated by a Federal court on the merits after—

(A) the pertinent government body denies a meaningful application to develop the land in question; and

(B)(i) the property owner seeks available waivers and administrative appeals from such denial; and

(ii) such waiver or appeal is not approved; and

(5) confirm the proper role of a State or territory to prevent land uses that are a nuisance under applicable law.

SEC. 4. DEFINITIONS.

In this Act, the term—

(1) "agency action" means any action, inaction, or decision taken by a Federal agency or other government agency that at the time of such action, inaction, or decision adversely affects private property rights;

(2) "district court"—

(A) means a district court of the United States with appropriate jurisdiction; and

(B) includes the United States District Court of Guam, the United States District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands;

(3) "Federal agency" means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(4) "owner" means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) "private property" or "property" means all interests constituting property, as defined by Federal or State law, protected under the fifth and fourteenth amendments to the United States Constitution; and

(6) "taking of private property", "taking", or "take" means any action whereby restricting the ownership, alienability, possession, or use of private property is an object of that action and is taken so as to require compensation under the fifth amendment to the United States Constitution, including by physical invasion, regulation, exaction, condition, or other means.

SEC. 5. PRIVATE PROPERTY ACTIONS.

(a) IN GENERAL.—An owner may file a civil action under this section to challenge the validity of any Federal agency action as a violation of the fifth amendment to the United States Constitution in a district court or the United States Court of Federal Claims.

(b) CONCURRENT JURISDICTION.—Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, the district court and the United States Court of Federal Claims shall each have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any regulation of a Federal agency affecting private property rights.

(c) ELECTION.—The plaintiff may elect to file an action under this section in a district court or the United States Court of Federal Claims.

(d) WAIVER OF SOVEREIGN IMMUNITY.—This section constitutes express waiver of the sovereign immunity of the United States with respect to an action filed under this section.

(e) APPEALS.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of any action filed

under this section, regardless of whether the jurisdiction of such action is based in whole or part under this section.

(f) **STATUTE OF LIMITATIONS.**—The statute of limitations for any action filed under this section shall be 6 years after the date of the taking of private property.

(g) **ATTORNEYS' FEES AND COSTS.**—In issuing any final order in any action filed under this section, the court may award costs of litigation (including reasonable attorneys' fees) to any prevailing plaintiff.

SEC. 6. JURISDICTION OF UNITED STATES COURT OF FEDERAL CLAIMS AND UNITED STATES DISTRICT COURTS.

(a) **UNITED STATES COURT OF FEDERAL CLAIMS.**—

(1) **JURISDICTION.**—Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department or upon any express or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department under section 5 of the Citizens Access to Justice Act of 1999."; and

(B) in paragraph (2) by inserting before the first sentence the following: "In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate."; and

(C) by adding at the end the following new paragraphs:

"(3) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have supplemental jurisdiction, concurrent with the courts designated under section 1346(b), to render judgment upon any related tort claim authorized under section 2674.

"(4) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.

"(5)(A) Any claim brought under this subsection to redress the deprivation of a right or privilege to use and enjoy real property as secured by the Constitution, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

"(B) For purposes of this paragraph, a final decision exists if—

"(i) the United States makes a definitive decision regarding the extent of permissible uses on real property that has been allegedly infringed or taken; and

"(ii) one meaningful application as defined by applicable law to use the property has been submitted but has not been approved within a reasonable time, and the party seeking redress has applied for one appeal and one waiver which has not been approved within a reasonable time, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

"(C)(i) The party seeking redress shall not be required to submit any application or apply for any appeal or waiver required under this section, if the district court determines that such action would be futile.

"(ii) In this subparagraph, the term 'futile' means the inability of an owner of real property to seek or obtain approvals to use such real property, and the hardship endured by

such inability, as defined under applicable land use, zoning, and planning law.

"(D) Nothing in this paragraph alters the substantive law of takings of property, including the burden of proof borne by the plaintiff."

(2) **PENDENCY OF CLAIMS IN OTHER COURTS.**—

(A) **IN GENERAL.**—Section 1500 of title 28, United States Code is repealed.

(B) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

(b) **DISTRICT COURT JURISDICTION.**—

(1) **CITIZEN ACCESS TO JUSTICE ACTION.**—Section 1346(a) of title 28, United States Code, is amended by adding after paragraph (2) the following:

"(3) Any civil action filed under section 5 of the Citizens Access to Justice Act of 1999."

(2) **UNITED STATES AS DEFENDANT.**—Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(h)(1) Any claim brought under subsection (a) to redress the deprivation of a right or privilege to use and enjoy real property as secured by the Constitution shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

"(2)(A) For purposes of this subsection, a final decision exists if—

"(i) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

"(ii) one meaningful application as defined by applicable law to use the property has been submitted but has not been approved within a reasonable time, and the party seeking redress has applied for one appeal and one waiver which has not been approved within a reasonable time, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

"(B)(i) The party seeking redress shall not be required to submit any application or apply for any appeal or waiver required under this section, if the district court determines that such action would be futile.

"(ii) In this subparagraph, the term 'futile' means the inability of an owner of real property to seek or obtain approvals to use such real property, and the hardship endured by such inability, as defined under applicable land use, zoning, and planning law.

"(3) Nothing in this subsection alters the substantive law of takings of property, including the burden of proof borne by the plaintiff."

(c) **DISTRICT COURT CIVIL RIGHTS JURISDICTION; ABSTENTION.**—Section 1343 of title 28, United States Code, is amended by adding at the end the following:

"(c) Whenever a district court exercises jurisdiction under subsection (a), the court shall not abstain from or relinquish jurisdiction to a State court in an action if—

"(1) no claim of a violation of a State law or privilege is alleged; and

"(2) a parallel proceeding in State court arising out of the same core of operative facts as the district court proceeding is not pending.

"(d) A district court that exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property may abstain where the party seeking redress—

"(1) has not submitted a meaningful application, as defined by applicable law, to use such real property; and

"(2) challenges whether an action of the applicable locality exceeds the authority conferred upon the locality under the applicable zoning or planning enabling statute of the State or territory.

"(e)(1) Where the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question certified to it, the district court shall proceed with resolving the merits.

"(2) In making a decision whether to certify a question of State law under this subsection, the district court may consider whether the question of State law—

"(A) will significantly affect the merits of the injured party's Federal claim; and

"(B) is patently unclear.

"(f)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a right or privilege to use and enjoy real property as secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, that causes actual and concrete injury to the party seeking redress.

"(2)(A) For purposes of this subsection, a final decision exists if—

"(i) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken;

"(ii)(I) one meaningful application, as defined by applicable law to use the property has been submitted but has not been approved within a reasonable time, and the party seeking redress has applied for one appeal or waiver which has not been approved within a reasonable time, where the applicable statute, ordinance, custom, or usage provides a mechanism for appeal to or waiver by an administrative agency; or

"(II) one meaningful application, as defined by applicable law, to use the property has been submitted but has not been approved within a reasonable time, and the disapproval at a minimum specifies in writing the range of use, density, or intensity of development of the property that would be approved, with any conditions therefor, and the party seeking redress has resubmitted another meaningful application taking into account the terms of the disapproval, except that—

"(aa) if no such reapplication is submitted, then a final decision shall not have been reached for purposes of this subsection, except as provided in subparagraph (B); and

"(bb) if the reapplication is not approved within a reasonable time, or if the reapplication is not required under subparagraph (B), then a final decision exists for purposes of this subsection if the party seeking redress has applied for one appeal or waiver with respect to the disapproval, which has not been approved within a reasonable time, where the applicable statute, ordinance, custom, or usage provides a mechanism of appeal or waiver by an administrative agency; and

"(iii) in a case involving the uses of real property, where the applicable statute or ordinance provides for review of the case by

elected officials, the party seeking redress has applied for but is denied such review.

“(B)(i) The party seeking redress shall not be required to submit any application or re-application, or apply for any appeal or waiver as required under this subsection, upon determination by the district court that such action would be futile.

“(ii) In this subparagraph, the term ‘futile’ means the inability of an owner of real property to seek or obtain approvals to use such real property, and the hardship endured by such inability, as defined under applicable land use, zoning, and planning law.

“(3) For purposes of this subsection, a final decision shall not require the party seeking redress to exhaust judicial remedies provided by any State or territory of the United States.

“(g) Nothing in subsection (c), (d), (e), or (f) alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”

SEC. 7. ATTORNEYS FEES FOR LOCALITIES.

Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended—

(1) by striking “In any action” and inserting “(1) Subject to paragraphs (2) and (3), in any action”; and

(2) by adding at the end the following:

“(2) In an action arising under section 1979 of the Revised Statutes (42 U.S.C. 1983), where the taking of real property is alleged, a district court, in its discretion, may hold the party seeking redress liable for a reasonable attorney’s fee and costs where the takings claim is not substantially justified, unless special circumstances make an award of such fees unjust. Whether or not the position of the party seeking redress was substantially justified shall be determined on the basis of any administrative and judicial record, as a whole, which is made in the district court adjudication for which fees and other expenses are sought.

“(3) In an action arising under section 1979 of the Revised Statutes (42 U.S.C. 1983) where the taking of real property is alleged, the district court shall decide any motion to dismiss such claim on an expedited basis. Where such a motion is granted and the takings claim is dismissed with prejudice, the non-moving party may be liable for a reasonable attorney’s fee and costs at the discretion of the district court, unless special circumstances make an award of such fees unjust.”

SEC. 8. DUTY OF NOTICE TO DEFENDANTS.

Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended—

(1) by inserting “(a)” before “Every person”; and

(2) by adding at the end the following:

“(b) A party seeking redress under this section for a taking of real property without the payment of compensation shall not commence an action in district court before 60 days after the date on which written notice has been given to any potential defendant.”

SEC. 9. DUTY OF NOTICE TO OWNERS.

Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by this Act (including the amendments made by this Act), the agency shall give notice to the owners of that property explaining their rights under this Act and the procedures for obtaining any compensation that may be due to them under this Act.

SEC. 10. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed to interfere with the authority of any State to create additional property rights.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act and shall apply to any agency action that occurs on or after such date.

By Mr. COCHRAN (for himself and Mr. KENNEDY)

S. 1029. A bill to amend title III of the Elementary and Secondary Education Act of 1965 to provide for digital education partnerships; to the Committee on Health, Education, Labor and Pensions.

DIGITAL EDUCATION ACT OF 1999

Mr. COCHRAN. Mr. President, today I am proud to introduce the Digital Education Act, a bill to amend title III of the Elementary and Secondary Education Act. I am pleased that the distinguished Senator from Massachusetts, Mr. KENNEDY, joins me in introducing this legislation to address some critical technology issues and the role of public broadcasting in education.

This bill expands Ready to Learn, a program of combined successful efforts in early childhood education. It expands MATHLINE, a proven model of teacher professional development, and it supports production of new digital educational material. The Digital Education Act includes innovative applications of progressive technology to promote the best practices in teaching and bring up to date information to classrooms throughout the country.

The Federal Government, State departments of education, local community businesses, and public television stations have made major investments in educational technology in recent years. These investments have focused on network infrastructure and computer hardware. It is time to invest in instructional resources that will make these new networks relevant and ensure that students and teachers are prepared to benefit fully from the new technology.

The Ready To Learn Television program, first authorized in 1994, has made a unique contribution to ensure that American children start school “ready to learn.” The program has funded an unprecedented blending of services, including quality children’s educational television programming broadcast by the Public Broadcasting Service, and a variety of outreach services for parents, teachers and other care givers.

Ready to Learn outreach programs have had tremendous success. Local public television stations that subscribe to Ready to Learn provide training and other services to parents and care givers of preschool children. Ready to Learn has grown from 10 public television stations to 130, reaching approximately 94 percent of the country. Each month Ready to Learn distributes over 35,000 books to children and over 900,000 copies of a custom parent/care giver magazine, specifically designed to integrate programming with reading. Ready to Learn is providing

the opportunities for children and parents to build that foundation for success. Over 330,000 parents and child care professionals have been trained in using television to encourage reading. Using Ready to Learn techniques, these adults have nurtured the reading of 4,331,829 children.

The Mississippi Educational Network in my home State, targets outreach services to high poverty populations who are particularly disadvantaged. The services include basic lessons in parenting, developmental benchmarks, health and nutrition, nurturing literacy in the home, and using the television programs children watch most to reinforce the lessons.

The families in these communities often have no reading material in their house. The first book given to a child by Mississippi Ready to Learn is quite likely to be the first book the child has ever owned. And, while Ready to Learn is designed for prekindergarten children, these families may have older children who may be equally in need. The local design of Ready to Learn allows the Mississippi director, Cassandra Washington, to tailor her workshops and even have a few older child books on hand for these families. Ms. Washington has been very resourceful in her outreach, finding non-traditional places for education, such as the Women Infants and Children Distribution Centers throughout Mississippi where families in need come regularly.

The International Reading Association stated recently, “By the time children are exposed to beginning reading instruction in kindergarten and first grade, they should have a foundation that assures them early success. Recent studies indicate just how critical those positive early experiences are to cognitive development and lifelong reading.”

Congressionally authorized and Federally funded research at the National Institutes of Health found that when parents read to their young children, it literally stimulates the brain development of the children. A recent University of Alabama study found that Ready to Learn families: watch 40 percent less television, watch more education-oriented programming, read more often with their children, read longer at each sitting, read for more educational and informational purposes, and took their children to libraries and bookstores more often than others.

Using the best research tested information available, Ready To Learn has driven the development of two major, commercial-free broadcast series for young children. The first, “Dragon Tales,” will begin airing this fall and will be integrated with carefully designed home and school resources to develop reading skills in young children.

The Digital Education Act will build on the early successes of Ready to

Learn. It will authorize funding to increase station grants, produce new outreach and training activities, and generate more services for parents and care givers, so that more children start school truly ready to learn.

The Digital Education Act provides for the demonstration of early childhood education digital applications with public television stations that are technologically ready. Currently, there are digital broadcast public television stations in Mississippi, Massachusetts, Missouri, Oregon, Pennsylvania, Virginia, Wisconsin, and Washington. These stations can transmit several programming services simultaneously. New applications include a dedicated channel for early childhood education and transmission of Internet accessible supplementary information text and video.

Today, children's programs produced by PBS and individual public broadcasting stations are among the television shows most watched by children and most used in classrooms. Many teachers and parents credit these programs for stimulating curiosity, educating, and encouraging continued learning through reading and other resources. The increased funding authorized in this bill will continue the investment of Ready to Learn resources in producing commercial-free children's programming of the highest educational quality.

Thirty years ago, Federal funding seeded the creation of Sesame Street. This carved out a meaningful place for educational children's programming as analog public television developed. The Digital Education Act stakes a new claim in the technological frontier for children and educational broadcasting and will ensure that this reinvention of television includes a major education component for children from the beginning.

The second element of the Digital Education Act concerns teacher professional development. In 1994, Congress authorized the "Telecommunications Demonstration Project for Mathematics," which has supported a project called MATHLINE. Through MATHLINE, PBS has pioneered a new model of teacher professional development, utilizing a blend of technologies, including online communications and video, to provide quality resources and services to teachers of mathematics.

Through public and private funding, PBS MATHLINE developed The Elementary School Math Project for teachers, grades K-5; The Middle School Math Project for teachers, grades 5-8; The High School Math Project; Focus on Algebra for teachers, grades 7-12; and The Algebraic Thinking Math Project for teachers, grades 3-8.

Over 5,000 math teachers in 40 States and the District of Columbia have participated in MATHLINE. These innova-

tive teaching techniques have taught more than 1.3 million students.

Three separate external evaluators have certified that MATHLINE is making a positive impact on the way teachers teach. For example, an evaluation of the Middle School Math Project by Rockman, et al. found, "The impact of PBS MATHLINE is clear. It has influenced how teachers see themselves and helped them create a powerful and enriching mathematics environment in their classrooms . . . The gap between belief and performance is narrowing . . . The combination of viewing, communicating, and doing seems to have resulted in substantive changes in teaching."

The International Reading Association stated in February, "The most effective professional development programs are those planned by teachers themselves, based on their assessments of their needs as educators and their students' needs as learners." MATHLINE does just that. It is real teachers, teaching real students, and passing success on to more teachers. The MATHLINE demonstration has worked.

Our legislation would authorize the New Century Program for Distributed Teacher Professional Development. Under this new program, the successful MATHLINE model will expand to other core curriculum areas, such as literature, science and social studies. It will also connect the digitized public broadcasting infrastructure with digital education networks at schools, colleges and universities throughout the nation. Nearly every teacher in the United States will have access to the New Century Program.

The third element of our legislation would authorize the Digital Education Content Collaborative. As a nation, we have made tremendous progress in the last decade bringing our schools from the 19th Century to 21st Century technologically. However, there is still one major element that needs to be in place to make it all work. That is world-class educational content that rivals video games for students' attention, is tied to state standards, which teachers seamlessly integrate into daily learning activities.

Programs distributed by public broadcast stations are used by more classroom teachers than any other because of their high quality and relevance to the curriculum. A survey commissioned by the Corporation for Public Broadcasting in 1997, found that 92 percent of teachers use videos to improve their lessons and public broadcasting programs were the highest rated. However, single channel analog distribution limited station services to a few hours per day of linear video broadcasts.

Digital broadcasting will dramatically increase and improve the types of services local public broadcasting sta-

tions can offer schools. One of the most exciting is the ability to broadcast multiple video channels and data information simultaneously. A vast library of instructional video materials could be distributed on full time, continuous channels and it could be available on demand, when teachers and students need it. Digitally produced programs will allow local stations broadcast flexibility and new interactive content that matches state standards and fits local curriculums.

As Members of the United States Senate, working to reauthorize the programs our elementary and secondary schools depend upon, we are also looking for successful models that lead to true educational reform and improvement.

The Digital Education Act takes the best of educational technology programming; improves those proven to work; and places renewed confidence in education's most trusted and successful content development partners.

Mr. President, I am proud to be associated with the public broadcasting community, and I am proud of their commitment to our earliest learners. I hope more Senators will join us in supporting this important education legislation.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1029

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Education Act of 1999".

SEC. 2. REVISION OF PART C OF TITLE III.

Part C of title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6921 et seq.) is amended to read as follows:

"PART C—READY-TO-LEARN DIGITAL TELEVISION

"SEC. 3301. FINDINGS.

"Congress makes the following findings:

"(1) In 1994, Congress and the Department collaborated to make a long-term, meaningful and public investment in the principle that high-quality preschool television programming will help children be ready to learn by the time the children entered first grade.

"(2) The Ready to Learn Television Program through the Public Broadcasting Service (PBS) and local public television stations has proven to be an extremely cost-effective national response to improving early childhood development and helping parents, caregivers, and professional child care providers learn how to use television as a means to help children learn, develop, and play creatively.

"(3) Independent research shows that parents who participate in Ready to Learn workshops are more critical consumers of television and their children are more active viewers. A University of Alabama study showed that parents who had attended a Ready to Learn workshop read more books

and stories to their children and read more minutes each time than nonattendees. The parents did more hands-on activities related to reading with their children. The parents engaged in more word activities and for more minutes each time. The parents read less for entertainment and more for education. The parents took their children to libraries and bookstores more than nonattendees. For parents, participating in a Ready to Learn workshop increases their awareness of and interest in educational dimensions of television programming and is instrumental in having their children gain exposure to more educational programming. Moreover, 6 months after participating in Ready to Learn workshops, parents who attended generally had set rules for television viewing by their children. These rules related to the amount of time the children were allowed to watch television daily, the hours the children were allowed to watch television, and the tasks or chores the children must have accomplished before the children were allowed to watch television.

“(4) The Ready to Learn (RTL) Television Program is supporting and creating commercial-free broadcast programs for young children that are of the highest possible educational quality. Program funding has also been used to create hundreds of valuable interstitial program elements that appear between national and local public television programs to provide developmentally appropriate messages to children and caregiving advice to parents.

“(5) Through the Nation’s 350 local public television stations, these programs and programming elements reach tens of millions of children, their parents, and caregivers without regard to their economic circumstances, location, or access to cable. In this way, public television is a partner with Federal policy to make television an instrument, not an enemy, of preschool children’s education and early development.

“(6) The Ready to Learn Television Program extends beyond the television screen. Funds from the Ready to Learn Television Program have funded thousands of local workshops organized and run by local public television stations, almost always in association with local child care training agencies or early childhood development professionals, to help child care professionals and parents learn more about how to use television effectively as a developmental tool. These workshops have trained more than 320,000 parents and professionals who, in turn, serve and support over 4,000,000 children across the Nation.

“(7)(A) The Ready to Learn Television Program has published and distributed millions of copies of a quarterly magazine entitled ‘PBS Families’ that contains—

“(i) developmentally appropriate games and activities based on Ready to Learn Television programming;

“(ii) parenting advice;

“(iii) news about regional and national activities related to early childhood development; and

“(iv) information about upcoming Ready to Learn Television activities and programs.

“(B) The magazine described in subparagraph (A) is published 4 times a year and distributed free of charge by local public television stations in English and in Spanish (PBS para la familia).

“(8) Because reading and literacy are central to the ready to learn principle Ready to Learn Television stations also have received and distributed millions of free age-appropriate books in their communities as part of

the Ready to Learn Television Program. Each station receives a minimum of 200 books each month for free local distribution. Some stations are now distributing more than 1,000 books per month. Nationwide, more than 300,000 books are distributed each year in low-income and disadvantaged neighborhoods free of charge.

“(9) In 1998, the Public Broadcasting Service, in association with local colleges and local public television stations, as well as the Annenberg Corporation for Public Broadcasting Project housed at the Corporation for Public Broadcasting, began a pilot program to test the formal awarding of a Certificate in Early Childhood Development through distance learning. The pilot is based on the local distribution of a 13-part video courseware series developed by Annenberg Corporation for Public Broadcasting and WTVS Detroit entitled ‘The Whole Child’. Louisiana Public Broadcasting, Kentucky Educational Television, Maine Public Broadcasting, and WLJT Martin, Tennessee, working with local and State regulatory agencies in the childcare field, have participated in the pilot program with a high level of success. The certificate program is ready for nationwide application using the Public Broadcasting Service’s Adult Learning Service.

“(10) Demand for Ready To Learn Television Program outreach and training has increased dramatically, with the base of participating Public Broadcasting Service member stations growing from a pilot of 10 stations to nearly 130 stations in 5 years.

“(11) Federal policy played a crucial role in the evolution of analog television by funding the television program entitled ‘Sesame Street’ in the 1960’s. Federal policy should continue to play an equally crucial role for children in the digital television age.

“SEC. 3302. READY-TO-LEARN.

“(A) IN GENERAL.—The Secretary is authorized to award grants to or enter into contracts or cooperative agreements with eligible entities described in section 3303(b) to develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate the achievement of the National Education Goals.

“(B) AVAILABILITY.—In making such grants, contracts, or cooperative agreements, the Secretary shall ensure that eligible entities make programming widely available, with support materials as appropriate, to young children, their parents, childcare workers, and Head Start providers to increase the effective use of such programming.

“SEC. 3303. EDUCATIONAL PROGRAMMING.

“(a) AWARDS.—The Secretary shall award grants, contracts, or cooperative agreements under section 3302 to eligible entities to—

“(1) facilitate the development directly, or through contracts with producers of children and family educational television programming, of—

“(A) educational programming for preschool and elementary school children; and

“(B) accompanying support materials and services that promote the effective use of such programming;

“(2) facilitate the development of programming and digital content especially designed for nationwide distribution over public television stations’ digital broadcasting channels and the Internet, containing Ready to Learn-based children’s programming and resources for parents and caregivers; and

“(3) enable eligible entities to contract with entities (such as public telecommuni-

cations entities and those funded under the Star Schools Act) so that programs developed under this section are disseminated and distributed—

(A) to the widest possible audience appropriate to be served by the programming; and

(B) by the most appropriate distribution technologies.

“(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under subsection (a), an entity shall be—

“(1) a public telecommunications entity that is able to demonstrate a capacity for the development and national distribution of educational and instructional television programming of high quality for preschool and elementary school children; and

“(2) able to demonstrate a capacity to contract with the producers of children’s television programming for the purpose of developing educational television programming of high quality for preschool and elementary school children.

“(c) CULTURAL EXPERIENCES.—Programming developed under this section shall reflect the recognition of diverse cultural experiences and the needs and experiences of both boys and girls in engaging and preparing young children for schooling.

“SEC. 3304. DUTIES OF SECRETARY.

“The Secretary is authorized—

“(1) to award grants, contracts, or cooperative agreements to eligible entities described in section 3303(b), local public television stations, or such public television stations that are part of a consortium with 1 or more State educational agencies, local educational agencies, local schools, institutions of higher education, or community-based organizations of demonstrated effectiveness, for the purpose of—

“(A) addressing the learning needs of young children in limited English proficient households, and developing appropriate educational and instructional television programming to foster the school readiness of such children;

“(B) developing programming and support materials to increase family literacy skills among parents to assist parents in teaching their children and utilizing educational television programming to promote school readiness; and

“(C) identifying, supporting, and enhancing the effective use and outreach of innovative programs that promote school readiness; and

“(D) developing and disseminating training materials, including—

“(i) interactive programs and programs adaptable to distance learning technologies that are designed to enhance knowledge of children’s social and cognitive skill development and positive adult-child interactions; and

“(ii) support materials to promote the effective use of materials developed under subparagraph (B) among parents, Head Start providers, in-home and center-based daycare providers, early childhood development personnel, elementary school teachers, public libraries, and after-school program personnel caring for preschool and elementary school children;

“(2) to establish within the Department a clearinghouse to compile and provide information, referrals, and model program materials and programming obtained or developed under this part to parents, child care providers, and other appropriate individuals or entities to assist such individuals and entities in accessing programs and projects under this part; and

“(3) to coordinate activities assisted under this part with the Secretary of Health and Human Services in order to—

“(A) maximize the utilization of quality educational programming by preschool and elementary school children, and make such programming widely available to federally funded programs serving such populations; and

“(B) provide information to recipients of funds under Federal programs that have major training components for early childhood development, including programs under the Head Start Act and Even Start, and State training activities funded under the Child Care Development Block Grant Act of 1990, regarding the availability and utilization of materials developed under paragraph (1)(D) to enhance parent and child care provider skills in early childhood development and education.

“SEC. 3305. APPLICATIONS.

“Each entity desiring a grant, contract, or cooperative agreement under section 3302 or 3304 shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

“SEC. 3306. REPORTS AND EVALUATION.

“(a) ANNUAL REPORT TO SECRETARY.—An eligible entity receiving funds under section 3302 shall prepare and submit to the Secretary an annual report which contains such information as the Secretary may require. At a minimum, the report shall describe the program activities undertaken with funds received under section 3302, including—

“(1) the programming that has been developed directly or indirectly by the eligible entity, and the target population of the programs developed;

“(2) the support materials that have been developed to accompany the programming, and the method by which such materials are distributed to consumers and users of the programming;

“(3) the means by which programming developed under this section has been distributed, including the distance learning technologies that have been utilized to make programming available and the geographic distribution achieved through such technologies; and

“(4) the initiatives undertaken by the eligible entity to develop public-private partnerships to secure non-Federal support for the development, distribution and broadcast of educational and instructional programming.

“(b) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the relevant committees of Congress a biannual report which includes—

“(1) a summary of activities assisted under section 3303(a); and

“(2) a description of the training materials made available under section 3304(1)(D), the manner in which outreach has been conducted to inform parents and childcare providers of the availability of such materials, and the manner in which such materials have been distributed in accordance with such section.

“SEC. 3307. ADMINISTRATIVE COSTS.

“With respect to the implementation of section 3303, eligible entities receiving a grant, contract, or cooperative agreement from the Secretary may use not more than 5 percent of the amounts received under such section for the normal and customary expenses of administering the grant, contract, or cooperative agreement.

“SEC. 3308. DEFINITION.

“For the purposes of this part, the term ‘distance learning’ means the transmission

of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.

“SEC. 3309. AUTHORIZATION OF APPROPRIATIONS.

“(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, \$50,000,000 for fiscal year 2000, and such sums as may be necessary for each of the 4 succeeding fiscal years.

“(b) FUNDING RULE.—Not less than 60 percent of the amounts appropriated under subsection (a) for each fiscal year shall be used to carry out section 3303.”

SEC. 3. REVISION OF PART D OF TITLE III.

Part D of title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6951 et seq.) is amended to read as follows:

“PART D—THE NEW CENTURY PROGRAM FOR DISTRIBUTED TEACHER PROFESSIONAL DEVELOPMENT

“SEC. 3401. FINDINGS.

“Congress makes the following findings:

“(1) Since 1995, the Telecommunications Demonstration Project for Mathematics (as established under this part pursuant to the Improving America’s Schools Act of 1994) (in this section referred to as ‘MATHLINE’) has allowed the Public Broadcasting Service to pioneer and refine a new model of teacher professional development for kindergarten through grade 12 teachers. MATHLINE uses video modeling of standards-based lessons, combined with professionally facilitated online learning communities of teachers, to help mathematics teachers from elementary school through secondary school adopt and implement standards-based practices in their classrooms. This approach allows teachers to update their skills on their own schedules through video, while providing online interaction with peers and master teachers to reinforce that learning. This integrated, self-paced approach breaks down the isolation of classroom teaching while making standards-based best practices available to all participants.

“(2) MATHLINE was developed specifically to disseminate the first national voluntary standards for teaching and learning as developed by the National Council of Teachers of Mathematics (NCTM). During 3 years of actual deployment, more than 5,800 teachers have participated for at least a full year in the demonstration. These teachers, in turn, have taught more than 1,500,000 students cumulatively.

“(3)(A) In the first 3 years of the MATHLINE project, the Public Broadcasting Service used the largest portion of the funds provided under this part—

“(i) to produce video-based models of classroom teaching;

“(ii) to produce and disseminate extensive accompanying print materials;

“(iii) to organize and host professionally moderated, year-long, online learning communities; and

“(iv) to train the Public Broadcasting Service stations to deploy MATHLINE in their local communities. In fiscal year 1998, the Public Broadcasting Service added an extensive Internet-based set of learning tools for teachers’ use with the video modules and printed materials, and the Public Broadcasting Service expanded the online resources available to teachers through Internet-based discussion groups and a national listserv.

“(B) To extend Federal funds, the Public Broadcasting Service has experimented with various fee models for teacher participation, with varying results. Using fiscal year 1998

Federal funds and private money, participation in MATHLINE will increase by 10,000 MATHLINE scholarships to preservice and inservice teachers. The Public Broadcasting Service and its participating member stations will distribute scholarships in each congressional district in the United States, with teachers serving disadvantaged populations given priority for the scholarships.

“(4) Independent evaluations indicate that teaching improves and students benefit as a result of the MATHLINE program.

“(5) The MATHLINE program is ready to be expanded to reach many more teachers in more subject areas. The New Century Program for Distributed Teacher Professional Development will link the digitized public broadcasting infrastructure with education networks by working with the program’s digital membership, and Federal and State agencies, to expand the successful MATHLINE model. Tens of thousands of teachers will have access to the New Century Program for Distributed Teacher Professional Development, to advance their teaching skills and their ability to integrate technology into teaching and learning. The New Century Program for Distributed Teacher Professional Development also will leverage the Public Broadcasting Service’s historic relationships with higher education to improve preservice teacher training.

“SEC. 3402. PROJECT AUTHORIZED.

“The Secretary is authorized to make grants to a nonprofit telecommunications entity, or partnership of such entities, for the purpose of carrying out a national telecommunications-based program to improve teaching in core curriculum areas. The program authorized by this part shall be designed to assist elementary school and secondary school teachers in preparing all students for achieving State content standards.

“SEC. 3403. APPLICATION REQUIRED.

“(a) IN GENERAL.—Each nonprofit telecommunications entity, or partnership of such entities, desiring a grant under this part shall submit an application to the Secretary. Each such application shall—

“(1) demonstrate that the applicant will use the public broadcasting infrastructure and school digital networks, where available, to deliver video and data in an integrated service to train teachers in the use of standards-based curricula materials and learning technologies;

“(2) assure that the project for which assistance is sought will be conducted in cooperation with appropriate State educational agencies, local educational agencies, national, State or local nonprofit public telecommunications entities, and national education professional associations that have developed content standards in the subject areas;

“(3) assure that a significant portion of the benefits available for elementary schools and secondary schools from the project for which assistance is sought will be available to schools of local educational agencies which have a high percentage of children counted for the purpose of part A of title I; and

“(4) contain such additional assurances as the Secretary may reasonably require.

“(b) APPROVAL OF APPLICATIONS; NUMBER OF SITES.—In approving applications under this section, the Secretary shall assure that the program authorized by this part is conducted at elementary school and secondary school sites in at least 15 States.

"SEC. 3404. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this part, \$20,000,000 for the fiscal year 2000, and such sums as may be necessary for each of the 4 succeeding fiscal years."

SEC. 4. ADDITION OF PART F TO TITLE III.

Title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6801 et seq.) is amended by adding at the end the following:

"PART F—DIGITAL EDUCATION CONTENT COLLABORATIVE**"SEC. 3701. FINDINGS.**

"Congress makes the following findings:

"(1) Over the past several years, both the Federal and State governments have made significant investments in computer technology and telecommunications in the Nation's schools. Tremendous progress has been made in wiring classrooms, equipping the classrooms with multimedia computers, and connecting the classrooms to the Internet.

"(2) There is a great need for aggregating high quality, curriculum-based digital content for teachers and students to easily access and use in order to meet the State standards for student performance.

"(3) Under Federal Communications Commission policy, public television stations and State networks are mandated to convert from analog broadcasting to digital broadcasting by 2003.

"(4) Most local public television stations and State networks provide high quality video programs, and teacher professional development, as a part of their mission to serve local schools. Programs distributed by public broadcast stations are used by more classroom teachers than any other because of their high quality and relevance to the curriculum. However analog distribution has limited kindergarten through grade 12 services to a few hours per day of linear video broadcasts on a single channel.

"(5) The new capacity of digital broadcasting, can dramatically increase and improve the types of services public broadcasting stations can offer kindergarten through grade 12 schools.

"(6) Digital broadcasting can contribute to the improvement of schools and student performance as follows:

"(A) Broadcast of multiple video channels and data information simultaneously.

"(B) Data can be transmitted along with the video content enabling students to interact, access additional information, communicate with featured experts, and contribute their own knowledge to the subject.

"(C) Both the video and data can be stored on servers and made available on demand to teachers and students.

"(7) Teachers depend on public television stations as a primary source of high quality video material. The material has not always been as accessible or adaptable to the curriculum as teachers would prefer. Moreover, direct student interaction with the material was difficult.

"(8) Public television stations and State networks will soon have the capability of creating and distributing interactive digital content that can be directly matched to State standards and available to teachers and students on demand to fit their local curriculum.

"(9) Interactive digital education content will be an important component of Federal support for States in setting high standards and increasing student performance.

"SEC. 3702. DIGITAL EDUCATION CONTENT COLLABORATIVE.

"(A) IN GENERAL.—The Secretary is authorized to award grants to or enter into contracts or cooperative agreements with eligible entities described in section 3703(b) to develop, produce, and distribute educational and instructional video programming that is designed for use by kindergarten through grade 12 schools and based on State standards.

"(b) AVAILABILITY.—In making the grants, contracts, or cooperative agreements, the Secretary shall ensure that eligible entities enter into multiyear content development collaborative arrangements with State educational agencies, local educational agencies, institutions of higher education, businesses, or other agencies and organizations.

"SEC. 3703. EDUCATIONAL PROGRAMMING.

"(a) AWARDS.—The Secretary shall award grants, contracts, or cooperative agreements under this part to eligible entities to—

"(1) facilitate the development of educational programming that shall—

"(A) include student assessment tools to give feedback on student performance;

"(B) include built-in teacher utilization and support components to ensure that teachers understand and can easily use the content of the programming with group instruction or for individual student use;

"(C) be created for, or adaptable to, State content standards; and

"(D) be capable of distribution through digital broadcasting and school digital networks.

"(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under subsection (a), an entity shall be a local public telecommunications entity as defined by section 397(12) of the Communications Act of 1934 that is able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality.

"(c) COMPETITIVE BASIS.—Grants under this part shall be awarded on a competitive basis as determined by the Secretary.

"(d) DURATION.—Each grant under this part shall be awarded for a period of 3 years in order to allow time for the creation of a substantial body of significant content.

"SEC. 3704. APPLICATIONS.

"Each eligible entity desiring a grant under this part shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

"SEC. 3705. MATCHING REQUIREMENT.

"An eligible entity receiving a grant under this part shall contribute to the activities assisted under this part non-Federal matching funds equal to not less than 100 percent of the amount of the grant. Matching funds may include funds provided for the transition to digital broadcasting, as well as in-kind contributions.

"SEC. 3706. ADMINISTRATIVE COSTS.

"With respect to the implementation of this part, entities receiving a grant under this part from the Secretary may use not more than 5 percent of the amounts received under the grant for the normal and customary expenses of administering the grant.

"SEC. 3707. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this part, \$25,000,000 for fiscal year 2000, and such sums as may be necessary for each of the 4 succeeding fiscal years."

Mr. KENNEDY. Mr. President, it is a privilege to join Senator COCHRAN in

sponsoring the "Digital Education Act of 1999." I commend him for his leadership in improving technology for children and families, so that more children come to school ready to learn.

In the early 1990's, Dr. Ernest Boyer, the distinguished former leader of the Carnegie Foundation, gave compelling testimony to the Senate Labor Committee about the appallingly high number of children who enter school without the skills to prepare them for learning. Their lack of preparation presented enormous obstacles to their ability to learn effectively in school, and seriously impaired their long-term achievement.

In response, Congress enacted the Ready-to-Learn program in 1992, and two years later its promise was so great that we extended it for five years. Because of the Department of Education and the Corporation for Public Broadcasting, the Ready-to-Learn initiative became an innovative and effective program. By linking the power of television to the world of books, many more children have been enabled to become good readers much more quickly.

Many children who enter school without the necessary basic skills are soon placed in a remedial program, which is costly for school systems. It is even more costly, however, for the students who face a bleaker future.

Today, by the time they enter school, the average child will have watched 4,000 hours of television. That is roughly the equivalent of four years of school.

For far too many youngsters, this is wasted time—time consuming "empty calories" for the brain. Instead, that time could be spent reading, writing, and learning. Through Ready-to-Learn television programming, children can obtain substantial education benefits that turn T.V. time into learning time.

As a result of Ready-to-Learn television, millions of children and families have access to high-quality television produced by public television stations across the country. Tens of thousands of parents and child-care providers have learned how to be better role models, to reinforce learning, and to be more active participants in children's learning from programs funded through Ready-to-Learn.

For many low-income families, the workshops, books, and television shows funded through this program are a vital factor in preparing children to read. These programs help parents and child-care providers teach children the basics, preparing them to enter school ready to learn and ready to succeed.

Ready-to-Learn provides 6.5 hours of non-violent educational programming a day. These hours include some of the best programs available to children, including Arthur, Barney & Friends, Mister Rogers' Neighborhood, The Puzzle Place, Reading Rainbow, and Sesame Street.

One of the most successful aspects of Ready-to-Learn is that it helps parents work more effectively with their children. Parents who participate in Ready-to-Learn workshops are more thoughtful consumers of television, and their children are more active viewers. These parents have more hands-on activities with their children, and they read more often with their children. They read less often for entertainment, and more often for education. They take their children more often to libraries and bookstores.

The workshops provided by the Ready-to-Learn program are considered the best of their kind. It also brings needed literacy services to parents and children at food distribution centers, homeless shelters, employment centers, and supermarkets.

Many of the innovations under Ready-to-Learn have come from local stations. WGBH in Boston is one of the nation's leaders in public broadcasting. It created the Reading Rainbow, and Where in the World is Carmen San Diego, which are leaders in educational programming across the country.

Last year, WGBH hosted 34 Ready-to-Learn workshops in Massachusetts. 1,100 parents and 265 child-care providers and teachers attended. These parents and providers in turn worked with 3,400 children, who are now better prepared to succeed in their schools.

WGBY of Springfield is the mainstay of literacy services for Western Massachusetts. This station trained 250 home day-care providers, who serve 2,500 children. A video lending library makes PBS materials available to teachers to use in their classroom.

Workshop participants receive training on using children's programs as the starting point for educational activities. Participants receive free books. For some, these are the only books they have ever owned. They receive the PBS Families magazine, in English or Spanish, and they also receive the broadcasting schedules. Each of these resources builds on the learning that begins with viewing the PBS programs.

Through partnerships with the Massachusetts Office of Child Care Services and community-based organizations such as Head Start, Even Start, and the Reach Out & Read Program at Boston Medical Center, Ready-to-Learn trainers are reaching many low-income families with media and literacy information.

In Worcester, the Clark Street Developmental Learning School offers a family literacy program that uses Reading Rainbow or Arthur in every session with families. In addition, the school has now expanded its efforts to create an adult literacy center in the school. Many of the parents involved in the Ready-to-Learn project now attend the adult education program there.

Similar successes are happening across the nation. Since 1994, the spon-

sors of Ready-to-Learn workshops have given away 1.5 million books. Their program has grown from 10 television stations in 1994 to 130 television stations today. They have conducted over 8,500 workshops reaching 186,000 parents and 146,000 child care providers, who have in turn affected the lives of over four million children.

The "Digital Education Act of 1999" we are introducing today will continue this high-quality children's television programming. Equally important, it will take this valuable service into the next century through digital television, a powerful resource for delivering additional information through television programs.

The Digital Education Act will also increase the authorization of funds for Ready-to-Learn programs from \$30 million to \$50 million a year, enabling these programs to reach even more families and children with these needed services.

The Digital Education Act also authorizes \$20 million for high-quality teacher professional development. Building on the success of the MATHLINE program, the bill will expand the program to include materials for helping teachers to teach to high state standards in core subject areas.

Participating stations make the teachers workshops available through districts, schools, and even on the teachers' own television sets. In this way, at their own pace, and in their own time, teachers can review the materials, observe other teachers at work, and reflect on their own practices. They can consider ways to improve their teaching, and make adjustments to their own practices. Teachers will also receive essential help in integrating technology into their teaching.

Teachers themselves are very supportive of the contribution that television can make to their classrooms. 88% of teachers surveyed in 1997 by the Corporation for Public Broadcasting said that quality television used in the classroom helped them be more creative, 92% said that it helped them be more effective in the classroom.

Finally, the Act will create a new "Digital Education Content Collaborative," with an authorization of \$25 million. Its goal is to stimulate quality content and curriculum through video and digital programs that will enable students to meet high state standards. Local public telecommunications agencies will create the programs, so that teachers can teach more effectively to the state standards and assess how well children are learning.

Again, I commend Senator COCHRAN for his leadership, and I urge my colleagues to join us in support of this important legislation, so that many more children can come to school ready to learn.

By Mr. BROWNBAC (for himself, Mr. HELMS, Mr. BURNS, Mr.

ROBERTS, Mr. FITZGERALD, and Mr. LUGAR):

S. 1032. A bill to permit ships built in foreign countries to engage in coastwise trade in the transport of certain products; to the Committee on Commerce, Science, and Transportation.

FREEDOM TO TRANSPORT ACT OF 1999

• Mr. BROWNBAC. Mr. President, today I am reintroducing legislation that will expand capacity and increase competition within the domestic transportation system. This legislation, which will allow foreign built ships to transport bulk commodities, forest products, and livestock between U.S. ports, will help to expand the overall capacity by allowing ship operators to expand their fleets through obtaining affordable ships.

Currently, Section 27 of the Merchant Marine Act of 1920, commonly referred to as the Jones Act, requires that merchandise being transported on water between U.S. ports travel on U.S. built, U.S. flagged, and U.S. citizen owned vessels that are documented by the Coast Guard for such carriage. The bill I am introducing today, The Freedom to Transport Act of 1999, does not seek to repeal the Jones Act. Rather, it provides very targeted modification—to allow foreign built ships to carry bulk cargo in domestic trade. These ships would have to register in the United States and comply with all U.S. laws, including Jones Act ownership and crewing requirements.

The current law makes it infeasible for domestic coastwise shipments of agricultural commodities to occur on bulk shipping vessels. This is largely because the cost of purchasing a ship in the United States is as much as three times higher than it can be obtained on the world market. As a result, there has been little capital infusion into the domestic Jones Act fleet for many years. As a consequence, the cost of transport on bulk Jones Act vessels, if they are available at all, is prohibitively high.

Agriculture is a pillar to the Kansas economy, and an efficient transportation is critical to American agriculture. Laws that raise the cost of conducting business and impede efficient means for transporting product have a negative impact on farmers around the country, including Kansas. Moreover, the cost of transporting goods is always a proportionately high cost of the delivered product for bulk commodities, but especially now as grain prices are at the lowest levels seen in years. Having means to the most cost-effective and efficient means for transporting product is now, more than ever, critical to American farmers.

If ocean transportation between U.S. ports were more efficient, more product might be delivered to its destination by ocean rather than by rail. For example, the poultry and pork producers in the grain deficit southeastern

United States could bring in grain by ocean through the Great Lakes rather than by across the country by railroad. Since little of this type of trade currently occurs, this could have the effect of increasing the overall capacity of the domestic transportation infrastructure. That would make more railcars available for transport in places like Kansas, particularly during the harvest season when there is often a shortage of available cars. Furthermore, more efficient coastwise transportation would bring down prices for trade to Hawaii, Puerto Rico, and Alaska, which oftentimes find it less expensive to purchase products from other countries than to pay the inflated costs of shipping from the mainland U.S.

I am aware that the maritime industry has supported the Jones Act as a protection of domestic industry for many years, and resists any change to the current law. However, despite the "protective" nature of the Jones Act, it has protected very little. In the last 50 years the merchant marine has lost 40,000 jobs and over 60 shipyards have closed since 1987. In my view this legislation would not only benefit the customers of transportation services, but would also inject new life into an industry that has missed out on the unprecedented growth that the rest of the economy has enjoyed in the last generation. I want to work with the maritime industry to address their concerns and look forward to their eventual support of this legislation, which I envision will help them as much as it will help agricultural shippers.

I would like to point out that the legislation as introduced enjoys broad support not only in the agriculture industry, but also among many industries that ship bulk commodities—including oil, coal, clay, and steel. Additionally, those engaged in commerce with the non-contiguous U.S. are supportive, including the Puerto Rico Manufacturers Association, the Hawaii Shippers Council, and the Alaska Jones Act Reform Coalition. Finally, the National Taxpayers Union and Americans for Tax Reform support this as a measure that would save consumers over \$14 billion annually.

A healthy maritime industry increases competitiveness, lowers costs, and improves service for customers of transportation. It creates jobs in the U.S. not only for the people who crew the ships, but for those who repair them, who own them, and who are employed by industries who buy transportation services. It is a win-win-win-win proposal.

I hope my colleagues will join me in reducing stifling government regulation and support this important bill. ●

By Mrs. FEINSTEIN:

S. 1033. A bill to amend title IV of the Social Security Act to coordinate the penalty for the failure of a State to op-

erate a State child support disbursement unit with the alternative penalty procedure for failures to meet data processing requirements; to the Committee on Finance.

CHILD SUPPORT PENALTY FAIRNESS ACT

Mrs. FEINSTEIN. Mr. President, today I am introducing the Child Support Penalty Fairness Act. This important legislation will remedy a flaw in federal child support laws that could cost California \$4 billion annually.

On April 30, the Department of Health and Human Services announced its intent to reject the State of California's plan for child and spousal support because California does not have a centralized "State Disbursement Unit" that distributes child support collections to families. The mandatory penalty for this failure is loss of all federal child support administrative funding, which amounts to \$300 million a year.

In addition, because the 1996 welfare reform law requires states to have an approved child support plan in order to receive the Temporary Assistance to Needy Families block grant, California could lose its entire TANF block grant of \$3.7 billion a year.

In other words, California faces a \$4 billion annual penalty for its failure to operate a State Disbursement Unit.

This so-called "nuclear penalty" is completely unjust and out of proportion. It will devastate the State of California's ability to serve low-income children and families—both families on welfare, and families who need child support so that they can stay off welfare. The penalty also will cripple the State's budget, seriously harming the largest economy in this nation.

I am not questioning the value of a State Disbursement Unit, or California's need to develop one. On the contrary, I am urging Governor Davis and the State legislature to come up with a plan to develop a State Disbursement Unit as quickly as possible. But I do not believe that poor families should be severely punished because the State has not gotten its act together.

Moreover, California's failure to develop a State Disbursement Unit is a direct result of its failure to develop a statewide computer system that tracks child support cases—and California is already paying a penalty for the computer failure.

The computer system penalty, which Congress established just last year, is fair and proportionate. More importantly, it rises over time, giving California a powerful incentive to get a computer system up and running. If California does not have a computer system in place by 2002, it will lose over \$109 million annually in federal funds.

It is simply unfair to levy a \$4 billion penalty against California for not having a State Disbursement Unit, when the State's failure to establish the unit is a direct result of a computer failure

for which the State is already being penalized.

The Child Support Penalty Fairness Act would provide that States could not be penalized for failure to develop centralized disbursement units, if they are already paying a penalty for computer-related problems.

Under this bill, California would still have to pay a significant penalty for its computer-related troubles. Moreover, if California gets a statewide computer system in place, but still fails to operate a centralized disbursement unit, the State would be subject to additional severe penalties. This provides powerful incentive for the State to develop both a computer system, and a central disbursement unit, quickly.

I believe that this bill is proportionate and fair. It will prompt the State of California to develop a State Disbursement Unit in a timely fashion, without placing aid to low income children and families at risk. It is simply the right thing to do. I hope that my colleagues will take up and pass the Child Support Penalty Fairness Act as quickly as possible.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1033

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Support Penalty Fairness Act".

SEC. 2. ALTERNATIVE PENALTY PROCEDURE FOR FAILURE TO OPERATE STATE DISBURSEMENT UNIT.

(a) IN GENERAL.—Section 455(a)(4) of the Social Security Act (42 U.S.C. 655(a)(4)) is amended by adding at the end the following:

"(E) The Secretary may not disapprove a State plan under section 454 against a State with respect to a failure to comply with section 454(27) for a fiscal year as long as the State is receiving a penalty under this paragraph with respect to a failure to comply with either section 454(24)(A) or 454(24)(B) for the fiscal year."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 101 of the Child Support Performance and Incentive Act of 1998.

By Mr. AKAKA (for himself, Ms. SNOWE, Mrs. MURRAY, and Ms. COLLINS):

S. 1034. A bill to amend title XVIII of the Social Security Act to increase the amount of payment under the Medicare program for pap smear laboratory tests; to the Committee on Finance.

INVESTMENT IN WOMEN'S HEALTH ACT OF 1999

Mr. AKAKA. Mr. President, today marks the 116th birthday of Dr. George Papanicolaou, who developed one of the most effective cancer screening tests in medical history—the Pap

smear. Cervical cancer was one of the leading causes of cancer deaths in women in the United States 50 years ago and it is still a major killer of women worldwide. I rise today to introduce the Investment in Women's Health Care Act, a bipartisan bill to increase the reimbursement for Pap smear laboratory tests under the Medicare program. I am pleased to be joined by my colleagues—Senators SNOWE, MURRAY and COLLINS.

The inadequacy of current lab test reimbursement was brought to my attention by pathologists who alerted me to the significant cost-payment differential for Pap smear testing in Hawaii. According to the American Pathology Foundation, Hawaii is one of the 23 States where the cost of performing the test greatly exceeds the Medicare payment. In Hawaii, the cost ranges between \$13.04 and \$15.80. Yet the Medicare reimbursement rate is only \$7.15.

The large disparity between the reimbursement level and the actual cost of performing the test may force labs in Hawaii and around the Nation to discontinue Pap smear testing. The below-cost reimbursement may compel some labs to process tests faster and in higher volume to improve cost efficiency. This situation increases the risk of inaccurate results and can severely handicap patient outcomes.

This bill would increase the reimbursement rate for Pap smear labwork from its current \$7.15 to \$14.60—the national average cost of the test. This rate is important because it establishes a benchmark for many private insurers.

Last year, we were successful in having language included in the omnibus appropriations conference report recognizing the large disparity between the costs incurred to provide the screening tests and the amount paid by Medicare. The conferees noted that data from laboratories nationwide indicates that the cost of providing the test averages \$13.00 to \$17.00, with the costs in some areas being higher. Accordingly, conferees urged the Health Care Financing Administration to increase Medicare reimbursement for Pap smear screening. Although HCFA has indicated a willingness to increase this payment, I am concerned that the adjustment the agency is considering may be significantly less than the costs incurred by most laboratories in providing this service. Therefore, my colleagues and I are compelled to reintroduce legislation that would implement what we believe to be an appropriate increase.

Mr. President, no other cancer screening procedure is as effective for early detection of cancer as the Pap smear. Over the last 50 years, the incidence of cervical cancer deaths has declined by 70 percent due in large part to the use of this cancer detection measure. Evidence shows that the like-

lihood of survival when cervical cancer is detected in its earliest stage is almost 100 percent, if treatment and follow-up is timely. If the Pap smear is to continue as an effective cancer screening tool, it must remain widely available and reasonably priced for all women. Adequate payment is necessary to ensure women's continued access to quality Pap smears.

I urge my colleagues to support this important bipartisan legislation. Mr. President, I also ask consent the text of my bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD as follows:

S. 1034

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Investment in Women's Health Act of 1999".

SEC. 2. INCREASE IN PAYMENT AMOUNT FOR PAP SMEAR LABORATORY TESTS.

(a) IN GENERAL.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395i(h)) is amended by adding at the end the following:

"(7) In no case shall payment under the fee schedule established under paragraph (1) for the laboratory test component of a diagnostic or screening pap smear be less than \$14.60."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to laboratory tests furnished on or after January 1, 2000.

Ms. SNOWE. Mr. President, I rise today to join my colleague from Hawaii, Senator AKAKA, in introducing the Investment in Women's Health Act.

Today we celebrate the 116th birthday of Dr. George Papanicolaou, the physician who developed the Pap smear. In the 50 years since Dr. Papanicolaou first began using this test, the cervical cancer mortality rate has declined by an astonishing 70 percent. There is no question that this test is the most effective cancer screening tool yet developed. The Pap smear can detect abnormalities before they develop into cancer. Having an annual Pap smear is one of the most important things a woman can do to help prevent cervical cancer.

Congress has recognized the incomparable contribution of the Pap smear in preventing cervical cancer and nine years ago directed Medicare to begin covering preventive Pap smears. Medicare beneficiaries are eligible for one test every three years, although a more frequent interval is allowed for women at high risk of developing cervical cancer. And through the Balanced Budget Act of 1997, Congress expanded the Pap smear benefit to also include a screening pelvic exam once every 3 years.

But the Medicare reimbursement rate is artificially low and does not accurately reflect the true cost of providing this vital test. The current Medicare rate of reimbursement is \$7.15, though the mean national cost of

the test is twice that amount: \$14.60 per test. The bill we introduce today, The Investment in Women's Health Act, will raise the Medicare reimbursement rate for Pap smears to at least \$14.60 per test.

Women understand the usefulness and life-saving benefit of the Pap smear. The U.S. Centers for Disease Control and Prevention reported last year that 95 percent of women age 18 years old and over have received a Pap smear at some point in their lives. And 85 percent of women age 18 years and older across the country have received a Pap smear within the last 3 years.

Unfortunately, the artificially low reimbursement rate threatens both our country's local clinical laboratories and the health of women across the country. Pathologists are increasingly concerned that low Medicare reimbursement for Pap smears will force them to stop providing the service and to ship the slides to large out-of-state laboratories. Shipping the slides to non-local, large-scale laboratories—"Pap mills"—reduces quality control, brings up continuity of care issues, and puts women at risk of higher rates of "false positives" or "false negatives."

Providing Pap smears locally facilitates the likelihood of follow-up by a pathologist, comparison of a patient's Pap smear to cervical biopsy, and facilitates better communication and consultation between the patient's pathologist and attending physician or clinician. When Pap smears are shipped out of the local community these vital comparisons are much more difficult to complete and are more prone to inconsistencies and error.

Inadequate reimbursement for Pap smears provided through Medicare threatens not only a woman's health but the financial stability of the laboratory as well. If a lab is forced to continue to subsidize Medicare Pap smears they will eventually either stop providing the Medicare service or go out of business—and neither option is acceptable. Finally, local laboratories have a proven track record of providing better service for the patients. A Pap smear is less likely to get lost in a local lab than among the tens of thousands of other tests in a "Pap mill" and cytotechnicians have better supervision by a pathologist in smaller laboratories than in large volume operations.

The Pap test has contributed immeasurably to the fight against cervical cancer. We cannot risk erasing our advancements in this fight because of low Medicare reimbursement. I urge my colleagues to join us.

By Mr. FEINGOLD (for himself and Mr. BINGAMAN):

S. 1035. A bill to establish a program to provide grants to expand the availability of public health dentistry programs in medically underserved areas,

health professional shortage areas, and other Federally-defined areas that lack primary dental services; to the Committee on Health, Education, Labor, and Pensions.

DENTAL HEALTH ACCESS EXPANSION ACT

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation to address a troubling—but little recognized—public health problem in this country, and that's access to dental health.

Unlike many public health problems, there are clinically proven techniques to prevent or delay the progression of dental health problems. These proven techniques are not only more cost-effective, but also are relatively simple if done early. I'm specifically referring to the use of fluoride and dental sealants. The combination of fluoride and sealants is so effective against tooth decay that it has been likened to a "magic potion." In fact, an article in Public Health Reports called the "one-two combination of fluoride and sealants . . . similar to that of vaccinations."

With such an effective prevention method in place, one might assume that dental disease is becoming increasingly rare in this country. But that's not the case, Mr. President, because, in order to receive these preventive treatments—this "magic potion" against dental disease—you need to see a dentist, and there simply are not enough dentists to provide these basic services to everyone who needs them. As of September 30 of last year, the United States had 1,116 dental health professions shortage areas, or Dental HPSA's according to the Health Resources and Services Administration. The chart I have here shows the counties in Wisconsin that have areas designated as shortage areas, but every single state in our Nation has a portion designated as a dental shortage area.

There are proven methods for preventing dental disease, yet 1,116 communities across our country—particularly underserved rural and inner-city communities—do not have enough dentists to provide simple preventive services. Barriers to dental care are particularly acute among lower income families, Medicaid enrollees, and the uninsured. Studies indicate that the prevalence of dental disease increases as income decreases. In many areas, there simply are not enough dentists to provide basic treatment to all who need them, and although there is a federal method for designating such areas as dental health professional shortage areas (DHPSA's) to become eligible for additional funding, the designation process can be so tedious that State dental directors simply lack the resources to complete the necessary documentation.

To illustrate this problem of undercounting shortage areas, as of September 30 of last year, only eight coun-

ties in Wisconsin had portions designated as DHPSA's according to the Health Resources and Services Administration (HRSA), but statewide only 23 percent of Medicaid enrollees had received dental care. As you can see from this chart, in 13 Wisconsin counties, fewer than 10 percent of Medicaid enrollees received dental care. According to Wisconsin's state dental director, Dr. Warren LeMay, 80 percent of tooth decay is found in the poorest 25 percent of children. Given the effectiveness of dental health care in preventing dental disease—particularly the combination of check-ups, fluoride, and sealants—the access problems are simply unacceptable.

And the impact of so many people going without dental care is devastating. Those of us who have ever had a toothache remember how excruciating that pain can be, making it difficult if not impossible to work, go to school or otherwise go about our business. For those Americans who lack access to dental services, however, the toothache is more than a bad memory—it is the here and now.

Mr. President, imagine you had a child, a daughter, in need of dental services. But you lack insurance, and cannot afford to pay out-of-pocket to see a dentist. Or you may have Medicaid, but the nearest dentist is more than 2 hours away, and you don't own a car. Since your child hasn't received the preventive care treatments, she has a lot of untreated tooth decay—decay that leads to infection, fevers, stomach aches, and, worst of all, debilitating pain, making it almost impossible for her to concentrate in school. She may also develop speech difficulties, since she may lack the teeth necessary to form certain words and sounds. When you try to get her emergency dental services, you find that the few dentists in the area have waiting lists of two months or more.

Mr. President, one mother, from Rhinelander, WI—which is in Oneida County in the northern part of my state—called me to tell me about her 8-year-old daughter in just that situation. Her daughter was in excruciating pain because of a severe toothache, but the one dental provider in the area had a waiting list of several weeks, so that mother had no choice but to take her child to the nearest hospital emergency room, where the child was given painkillers to use until she could be seen by a dentist. Whereas routine primary dental care could have prevented this decay altogether, this mother had to take her young child to the hospital emergency room for prescription painkillers in order to make the wait before seeing the dentist bearable.

Mr. President, the unfortunate reality is that I hear such stories from my constituents on a regular basis, and I have heard enough to know that it's time to stop this needless suffering

from dental disease by increasing access to dental care.

The legislation I am introducing today, the Dental Health Access Expansion Act, will establish take three important steps to promote access to dental health services:

First, the bill creates a federal grant program to be administered by the Health Resources and Services Administration through which community health centers and local health departments in designated dental health professions shortage areas can apply for funding to assist in the hiring of primary care dentists. Strengthening locally run dental access programs ensures a safety net for these vitally important services.

The bill also creates a grant program to give bonus payments to dentists in shortage areas who devote at least 25 percent of their practice to Medicaid patients. More than 90 percent of America's dentists are in private practice, and incentive payments for dentists to increase their Medicaid practice helps to bring needy patients into the dental care mainstream.

Finally, the bill requires that HRSA work with the Association of State and Territorial Dental Directors and other organizations interested in expanding dental health access to simplify the process for designating dental shortage areas. Right now the system is so complicated that states simply don't have the resources to fill out the paperwork needed to get the designation.

Mr. President, the Dental Health Access Expansion Act is meant to complement existing initiatives—such as Health Professions Training Program expansions of general dentistry residencies, and the National Health Service Corps scholarship program—to increase access to primary care dental services in underserved communities. I have supported these and other programs in the past, and will continue to do so. My legislation is also meant to complement the excellent oral health initiatives proposed by my colleague, Senator BINGAMAN of New Mexico. I am thankful for the good work he has done in increasing awareness about this issue, and look forward to working with him to increase access to dental health services.

Through the legislation I am proposing, we can increase the number of dentists providing care to underserved communities, and in doing so strengthen our nation's existing network of Community Health Centers and local health departments.

Advances in dentistry have given us the tools to eradicate most dental diseases—what we need now is to provide people with access to dental care so that they can receive the simple preventive treatments they need, and that's what my legislation can help us achieve.

By Mr. KOHL (for himself, Mr. DODD, and Mr. ROCKEFELLER):

S. 1036. A bill to amend parts A and D of title IV of the Social Security Act to give States the option to pass through directly to a family receiving assistance under the temporary assistance to needy families program all child support collected by the State and the option to disregard any child support that the family receives in determining a family's eligibility for, or amount of, assistance under that program; to the Committee on Finance.

CHILDREN FIRST CHILD SUPPORT REFORM ACT
OF 1999

Mr. KOHL. Mr. President, I rise today to introduce legislation, along with my colleagues Senator DODD of Connecticut and Senator ROCKEFELLER of West Virginia, to provide more resources to America's children and families by encouraging more parents to live up to their child support obligations. My legislation, the Children First Child Support Reform Act, would enhance the options and incentives available to states to allow more child support to be paid directly to the families to whom it is owed and not be counted against public assistance benefits. My legislation will help assure more noncustodial parents that the child support they pay will actually contribute to the wellbeing of their child, rather than the government, and also help reduce administrative burdens on the state.

As my colleagues know, since its inception in 1975, our Federal-State Child Support Enforcement Program has been tasked with collecting child support for families receiving public assistance and other families that request help in enforcing child support. Toward this end, the program works to establish paternity and legally binding support orders, while collecting and disbursing funds on behalf of families so that children receive the support they need to grow up in healthy, nurturing surroundings.

But on one crucial point, the current program does not truly work on behalf of families and, perhaps more importantly, actually works against families.

Under current law, if a family is not on public assistance, support collected by the Child Support Enforcement Program is generally sent directly to the family. However, and this is the crux of the problem, support collected on behalf of families receiving public assistance is kept by the State and Federal Governments as reimbursement for welfare expenditures. Thus, for families on public assistance, the child support program ends up benefiting the financial interests of the government, rather than their children.

The research shows that many non-custodial parents are discouraged from paying child support because they realize and resent the fact that their payments go to the government rather than benefiting their children directly.

In addition, some custodial parents are skeptical about working with the child support agency to secure payments since the funds are generally not forwarded to them. Obviously, these builtin program obstacles to reliable, timely child support payments serve to undermine the program's intended goals of promoting self-sufficiency and personal responsibility.

Mr. President, we know that an estimated 800,000 families would not need public assistance if they could count on the child support owed to them. In addition, we know that 23 million children are owed more than \$43 billion in outstanding support. Clearly, the vital importance of child support in keeping families off of assistance remains as true today as when the program began. In a world with TANF time limits, it has never been more important. And with these figures in mind, it is not unthinkable that some policymakers may have or might still consider this program as a means of recovering welfare expenditures.

But I am convinced that that thinking must change, if not be cast off entirely, because, simply put, times have changed. The welfare reform law of 1996, which I supported, paved the way for time limits and work requirements that provide clear and compelling incentives for families to enter the workforce and find a way to stay there. Open ended, unconditional public support is no longer a reality, and our goal and responsibility as policymakers, now more than ever before, is to give families the tools and resources they need to prepare for and ultimately survive the day when they are without public assistance.

We fundamentally changed welfare, now we fundamentally reexamine the central role of child support in helping families as they struggle to become and remain self-sufficient. To this end, we've made some, but not nearly enough, progress. Under the welfare reform law, states will eventually be required to distribute state-collected child support arrears owed to the family before paying off arrears owed to the state and Federal governments for welfare expenditures. In addition, states were provided with some ability to continue or expand the \$50 passthrough that had been required under previous law. But only one state—my homestate of Wisconsin—has opted to let families retain all support paid. As you know, Wisconsin has been a leader and national model in the area of welfare reform. Under Wisconsin's welfare program, child support counts as income in determining financial eligibility for welfare assistance, but once eligibility is established, the child support income is disregarded in calculating program benefits. In other words, families are allowed to keep their own money. Non-custodial parents can be assured that their con-

tribution counts and that their child support payments go to their children. And both parents are presented with a realistic picture of what that support means in the life of their child.

I worked with Wisconsin to secure the waivers necessary to pursue this innovative policy and want to provide the other states with additional flexibility and options so that they can follow Wisconsin's example.

In addition to helping families, the expanded passthrough and disregard approach also has significant benefits on the administrative side. The current distribution requirements place significant accounting and paperwork burdens on the states. They are also costly. Data from the Federal Office of Child Support demonstrates that nearly 20 percent of program expenditures are spent simply processing payments. States are required to maintain a complicated set of accounts to determine whether support collected should be paid to the family or kept by the government. These complex accounting rules depend on whether the family ever received public assistance, the date a family begins and ends assistance, whether the non-custodial parent is current on payments or owes arrears, the method of collection and other factors.

We know that we have already asked much of the states in the realm of automation, systems integration and welfare law child support enforcement adjustments. We hope and believe these improvements will lead to better collection rates. Now we have a chance to simplify and improve distribution of support. What could be simpler than a distribution system in which child support collected would automatically be delivered to the children to whom it is owed? A distribution system in which child support agencies would distribute current support and arrears to both welfare and non-welfare families in exactly the same way?

Mr. President, child support financing must be addressed in the near future. First, our current distribution scheme is out of step with the philosophy of current welfare policy. We must move the child support program from cost-recovery to service delivery for all families. Second, the current financing scheme is no longer workable. TANF caseloads are decreasing dramatically, even as overall child support caseloads are increasing. Therefore, while the system needs additional resources, the portion of the caseload that produces those resources is decreasing. We must put the child support program on a sound financial footing that confirms a strong Federal and state commitment to the program and gives states additional flexibility to put more resources into the hands of children and let families keep more of their own money.

Let me strongly affirm that by advocating an expanded passthrough and

disregard approach, I am absolutely not advocating a disinvestment in our child support system by either the Federal government or the states. Our commitment to this program must remain strong and steadfast. I am working to expand the passthrough for the reasons that I've explained, but I am also committed to paying for it in a responsible way. Not knowing what the proposal will cost today necessarily requires that we keep ourselves open to adjustments as the debate proceeds.

That said, it is time for us to envision a child support program that truly serves families and works to advance, not undermine, the TANF policy goals of self-sufficiency and personal responsibility with which it is inextricably combined. Because assistance is now time-limited, we must give families the tools to survive in a world without public help, a world where they must rely on their own resources. In that equation, we all know that child support is fundamental. Letting as many as 5 years go by with child support payments either not being or accruing to the state rather than the family does nothing to advance those goals.

Mr. President, it's time to put our children first and envision a child support program that truly serves families. We can do that by passing this legislation to improve the public system, let families keep more of their own money, and make child support truly meaningful in the everyday lives of children on public assistance.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1036

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children First Child Support Reform Act of 1999".

SEC. 2. DISTRIBUTION AND TREATMENT OF CHILD SUPPORT COLLECTED BY THE STATE.

(a) STATE OPTION TO PASS ALL CHILD SUPPORT COLLECTED DIRECTLY TO THE FAMILY.—

(1) IN GENERAL.—Section 457 of the Social Security Act (42 U.S.C. 657) is amended—

(A) in subsection (a), by striking "(e) and (f)" and inserting "(e), (f), and (g)"; and

(B) by adding at the end the following:

"(g) STATE OPTION TO PASS THROUGH ALL SUPPORT COLLECTED TO THE FAMILY.—

"(1) IN GENERAL.—At State option, subject to paragraph (2), and subsections (a)(4), (b), (e), (d), and (f), this section shall not apply to any amount collected on behalf of a family as support by the State and any amount so collected shall be distributed to the family.

"(2) INCOME PROTECTION REQUIREMENT.—A State may not elect the option described in paragraph (1) unless the State also elects (through an amendment to the State plan submitted under section 402(a)) to disregard any amount so collected and distributed for purposes of determining the amount of as-

sistance that the State will provide to the family under the State program funded under part A pursuant to section 408(a)(12)(B).

"(3) OPTION TO PASS THROUGH AMOUNTS COLLECTED PURSUANT TO A CONTINUED ASSIGNMENT.—At State option, any amount collected pursuant to an assignment continued under subsection (b) may be distributed to the family in accordance with paragraph (1).

"(4) RELEASE OF OBLIGATION TO PAY FEDERAL SHARE.—If a State that elects the option described in paragraph (1) also elects to disregard under section 408(a)(12)(B) at least 50 percent (determined, at the option of the State, in the aggregate or on a case-by-case basis) of the total amount annually collected and distributed to all families in accordance with paragraph (1) for purposes of determining the amount of assistance for such families under the State program funded under part A, the State is released from—

"(A) calculating the Federal share of the amounts so distributed and disregarded; and

"(B) paying such share to the Federal Government."

(2) AUTHORITY TO CLAIM PASSED THROUGH AMOUNT FOR PURPOSES OF TANF MAINTENANCE OF EFFORT REQUIREMENTS.—Section 409(a)(7)(B)(i)(I)(aa) of the Social Security Act (42 U.S.C. 609(a)(7)(B)(i)(I)(aa)) is amended by inserting "; and, in the case of a State that elects under section 457(g) to distribute any amount so collected directly to the family, any amount so distributed (regardless of whether the State also disregards that amount under section 408(a)(12) in determining the eligibility of the family for, or the amount of, such assistance)" before the period.

(b) STATE OPTION TO DISREGARD CHILD SUPPORT COLLECTED FOR PURPOSES OF DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, TANF ASSISTANCE.—Section 408(a) of the Social Security Act (42 U.S.C. 608(a)) is amended by adding at the end the following:

"(12) STATE OPTION TO DISREGARD CHILD SUPPORT IN DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, ASSISTANCE.—

"(A) OPTION TO DISREGARD CHILD SUPPORT FOR PURPOSES OF DETERMINING ELIGIBILITY.—A State to which a grant is made under section 403 may disregard any part of any amount received by a family as a result of a child support obligation in determining the family's income for purposes of determining the family's eligibility for assistance under the State program funded under this part.

"(B) OPTION TO DISREGARD CHILD SUPPORT IN DETERMINING AMOUNT OF ASSISTANCE.—A State to which a grant is made under section 403 may disregard any part of any amount received by a family as a result of a child support obligation in determining the amount of assistance that the State will provide to the family under the State program funded under this part."

(c) MAINTENANCE OF EFFORT REQUIREMENT.—Section 454 of the Social Security Act (42 U.S.C. 654) is amended—

(1) in paragraph (32), by striking "and" at the end;

(2) in paragraph (33), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(34) provide that, if the State elects to distribute support directly to a family in accordance with section 457(g), the State share of expenditures under this part for a fiscal year shall not be less than an amount equal to the highest amount of such share expended for fiscal year 1995, 1996, 1997, or 1998 (determined without regard to any amount expended that was eligible for payment under section 455(a)(3))."

(d) CONFORMING AMENDMENT.—Section 457(f) of the Social Security Act (42 U.S.C. 657(f)) is amended by striking "Notwithstanding" and inserting "AMOUNTS COLLECTED ON BEHALF OF CHILDREN IN FOSTER CARE.—Notwithstanding".

(e) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 1999.

By Mrs. BOXER:

S. 1037. A bill to amend the Toxic Substances Control Act to provide for a gradual reduction in the use of methyl tertiary butyl ether, and for other purposes; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, today I am pleased to introduce legislation to nationally phase-out the use of the fuel oxygenate methyl tertiary butyl ether (MTBE). My bill provides for a priority phase-out schedule designed to immediately prohibit MTBE use in areas where it is leaking into ground and surface waters, to prevent the spread of MTBE to areas where its use is currently limited or nonexistent, and to set us on a course to removing MTBE in all other areas of the nation.

MTBE has been used in the blending of gasoline since the 1970s, but its use increased dramatically following the passage of the Clean Air Act Amendments of 1990. In regions of the country with particularly poor air quality, including Southern California and Sacramento, the Act required the use of reformulated gasoline.

Under the Act, reformulated gasoline must contain 2% oxygenate by weight.

Today, about 70% of the gasoline sold in California contains 2% oxygen by weight due to this requirement. While other oxygenates like ethanol may be used to meet this 2% requirement, the ready availability of MTBE and its chemical properties made it the oxygenate of choice among most oil companies.

While the oxygenate of choice, however, MTBE is also classified as a possible human carcinogen. Moreover, when MTBE enters groundwater, it moves through the water very fast and very far. Once there, MTBE resists degrading in the environment. We know very little about how long it takes to break down to the point that it becomes harmless. We do know that at even very low levels, MTBE causes water to take on the taste and odor of turpentine—rendering it undrinkable.

That is, it makes water smell and taste so bad that people won't drink it.

I first became aware of the significance of the threat MTBE posed to drinking water following the discovery that MTBE had contaminated drinking water wells in Santa Monica. Ultimately, Santa Monica was forced to close drinking water wells that supplied approximately half of its drinking water due to that contamination. Clean up of Santa Monica's drinking water supply continues today under

the oversight of the Environmental Protection Agency (EPA) at significant cost.

Following that discovery, I held a California field hearing of the Senate Committee on Environment and Public Works, of which I am a member, on the issue of MTBE contamination. Based upon the testimony I received at that hearing, I became convinced that MTBE posed a significant threat to drinking water not only in California, but nationwide. Shortly after the hearing, I wrote what would be one of many letters to the Administrator of EPA urging her to take action to remove this threat to the nation's drinking water supply.

While EPA has taken many laudable actions to speed the remediation of MTBE contaminated drinking water, it has been slow to respond to my calls for a nationwide MTBE phase-out. EPA maintains that it lacks the legal authority to phase-out the use of this harmful gasoline additive.

In the face of this federal inaction, and since the discovery of MTBE contamination in Santa Monica and my hearing in California, revelations of MTBE contamination in California and the nation have proliferated. In June 1998, the Lawrence Livermore National Laboratory estimated that MTBE is leaking from over 10,000 underground storage tanks in California alone. Potential clean up costs associated with MTBE contamination in my state range between \$1 to \$2 billion. Reports of MTBE contamination in the northeastern United States are also now becoming more common, and several state legislatures have introduced legislation to phase-out or ban MTBE use.

This flurry of activity in the northeastern states follows upon the first state action to prohibit the use of MTBE. Specifically, on March 26, 1999, California Governor Gray Davis provided that MTBE use in California will be prohibited after December 31, 2002.

While the action in California and several other states to begin to address the MTBE problem is certainly to be commended, I believe it demonstrates a failure of federal policymakers to design a national solution to what is clearly a national problem.

The legislation I introduce today would provide that solution.

First, my bill empowers the Environmental Protection Agency (EPA) to immediately prohibit MTBE use in areas where the additive is leaking into ground or surface waters. In my view, we must swiftly stop the use of MTBE in areas where we know we've got leaking underground storage tanks. That's just common sense.

Second, my bill prohibits the use of MTBE after January 1, 2000 in areas around the nation where the use of oxygenates like MTBE is not required by law. It has been recently revealed that oil companies have been adding

significant quantities of MTBE to gasoline in the San Francisco area even though oxygenates like MTBE are not required to be used in that area. Notwithstanding California's MTBE phase-out, such MTBE use may legally continue throughout California until the state phase-out deadline of December 31, 2002.

As we face an estimated \$1 to \$2 billion in MTBE clean up costs in California alone, I believe we must swiftly take steps to prevent the spread of MTBE contamination to areas where its use is currently limited and is in no sense required under the law.

Third, the bill prohibits MTBE use nationwide after January 1, 2003, and provides for specific binding percentage reductions of MTBE use in the interim. Finally, the bill requires EPA to conduct an environmental and health effects study of ethanol use as a fuel additive.

I am hopeful that my House and Senate colleagues can act quickly to ensure the passage of my legislation to provide a nationwide solution to the nationwide problem of MTBE contamination.

I ask unanimous consent that the full text of my legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1037

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF METHYL TERTIARY BUTYL ETHER.

Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended by adding at the end the following:

“(f) USE OF METHYL TERTIARY BUTYL ETHER.—

“(1) PROHIBITION ON USE IN SPECIFIED NON-ATTAINMENT AREAS.—Effective beginning January 1, 2000, a person shall not use methyl tertiary butyl ether in an area of the United States that is not a specified non-attainment area that is required to meet the oxygen content requirement for reformulated gasoline established under section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)).

“(2) PROHIBITION ON USE IN AREAS OF LEAKAGE.—If the Administrator finds that methyl tertiary butyl ether is leaking into ground water or surface water in an area, the Administrator may immediately prohibit the use of methyl tertiary butyl ether in the area.

“(3) UPGRADING OF UNDERGROUND STORAGE TANKS.—In enforcing the requirement that underground storage tanks be upgraded in accordance with section 280.21 of title 40, Code of Federal Regulations, the Administrator shall focus enforcement of the requirement on areas described in paragraph (2).

“(4) USE OF METHYL TERTIARY BUTYL ETHER IN GASOLINE.—

“(A) INTERIM PERIOD.—

“(i) PHASED REDUCTION.—

“(I) IN GENERAL.—The Administrator shall promulgate regulations to require—

“(aa) by January 1, 2001, a ½ reduction in the quantity of methyl tertiary butyl ether that may be used in gasoline; and

“(bb) by January 1, 2002, a ¾ reduction in the quantity of methyl tertiary butyl ether that may be used in gasoline.

“(II) BASIS FOR REDUCTIONS.—Reductions under subclause (I) shall be based on the quantity of methyl tertiary butyl ether in use in gasoline in the United States as of the date of enactment of this subsection.

“(ii) LABELING.—During the period beginning on the date of enactment of this subsection and ending December 31, 2002, the Administrator shall require any person selling gasoline that contains methyl tertiary butyl ether at retail to prominently label the fuel dispensing system for the gasoline with a notice that the gasoline contains methyl tertiary butyl ether.

“(B) PROHIBITION.—Effective beginning January 1, 2003, a person shall not use methyl tertiary butyl ether in gasoline.”.

SEC. 2. STUDY OF EFFECTS OF FUEL COMPONENTS.

Not later than July 31, 2000, the Administrator of the Environmental Protection Agency shall—

(1) conduct a study of the behavior, toxicity, carcinogenicity, health effects, and biodegradability, in air and water, of ethanol, olefins, aromatics, benzene, and alkylate; and

(2) report the results of the study to Congress.

By Mr. FRIST:

S. 1041. A bill to amend title 38, United States Code, to permit certain members of the Armed Forces not currently participating in the Montgomery GI Bill educational assistance program to participate in that program, and for other purposes; to the Committee on Veterans Affairs.

GI EDUCATION OPPORTUNITY ACT OF 1999

● Mr. FRIST. Mr. President, I rise today to offer legislation that will assist the men and women serving in our armed forces in attaining an education. The GI Education Opportunity Act is targeted at a group serving in our military that has been forgotten since the passage of the Montgomery GI Bill. Before the GI Bill was enacted in 1985, new servicemen were invited to participate in a program called the Veterans' Educational Assistance Program, or VEAP. This program offered only a modest return on the service member's investment and, as a consequence, provided little assistance to men and women in the armed services who wanted to pursue additional education. It was and is inferior to the Montgomery GI Bill that every new serviceman is offered today.

The GI Education Opportunity Act would allow active duty members of the armed services who entered the service after December 31, 1976 and before July 1, 1985 and who are or were otherwise eligible for the Veterans' Educational Assistance Program to participate in the Montgomery GI Bill. This group of military professionals largely consists of the mid-career and senior noncommissioned officer ranks of our services—the exact group that new recruits have as mentors and leaders. If we really believe in the importance of providing our servicemen and

women with the education opportunities afforded by the Montgomery GI Bill, it is critical that we offer all service members the opportunity to participate of they choose.

It is important to remember that much of the impetus for the creation of the Montgomery GI Bill was that the Veterans' Educational Assistance Program was not doing the job. It was not providing sufficient assistance for young men and women to go to college. It was expensive for them to participate, and provided little incentive for young men and women to enter the military. The Montgomery GI Bill offers those serving in the military a significant increase in benefits over its predecessor and has been one of the most important recruiting tools over the last decade. It is essential that active military still covered under VEAP but not by the Montgomery GI Bill be brought into the fold.

The injustice that my bill attempts to address is that new recruits are eligible for a better education program than the noncommissioned officers responsible for their training and well-being. Expanding Montgomery Bill eligibility to those currently eligible for VEAP would, in many cases, help mid-career and senior noncommissioned officers, who are the backbone of our force and set the example for younger troops, become better educated. This legislation is modest in its scope and approach, but is enormously important for the individual attempting to better himself through education. Moreover, this legislation sends a meaningful message to those serving to protect the American interest that Congress cares. S. 4, the Soldiers, Sailors, Airmen, and Marines Bill of Rights Act which I was proud to cosponsor was an enormous step in this direction, and my legislation complements that effort.

Some of the common sense provisions of The GI Education Opportunity Act are: 1. Regardless of previous enrollment or disenrollment in the VEAP, active military personnel may choose to participate in the GI Bill. 2. Participation for VEAP-eligible members in the GI Bill is to be based on the same "buy in requirements" as are currently applicable to any new GI Bill participant. For example, an active duty member is required to pay \$100 a month for twelve months in order to be eligible for the Montgomery GI Bill. The same would be required of someone previously eligible for VEAP. 3. Any active duty member who has previously declined participation in the GI bill may also participate. 4. There will be a one year period of eligibility for enrollment.

I believe that if we are to maintain the best trained, and most capable military force in the world, we must be committed to allowing the people that comprise our armed forces to pursue further education opportunities. I be-

lieve that this modest legislation will have a positive effect on morale and give our noncommissioned officers additional opportunities for self-improvement and life-long learning. I ask for my colleagues support in this effort.●

By Mrs. HUTCHISON (for herself, Mr. BREAUX, Mr. DOMENICI, Mr. BINGAMAN, Mr. LOTT, Ms. LANDRIEU, Mr. COCHRAN, Mr. THOMAS, Mr. BROWNBACK, and Mr. GRAMM):

S. 1042. A bill to amend the Internal Revenue Code of 1986 to encourage domestic oil and gas production, and for other purposes; to the Committee on Finance.

DOMESTIC ENERGY PRODUCTION SECURITY AND STABILIZATION ACT

● Mrs. HUTCHISON. Mr. President, I am pleased today to introduce with my colleague from Louisiana, Senator BREAUX, the Domestic Energy Production Security and Stabilization Act. This bill represents a necessary and workable proposal to ensure that the United States does not lose even more of its energy independence.

Mr. President, the oil and gas industry in this country is in a state of unprecedented crisis. Over the last year-and-a-half, oil and gas prices have been at historic lows. This has led to the closing of over 200,000 domestic oil and gas wells, has brought new exploration to a virtual standstill, and has cost an estimated quarter of a million American jobs.

Not only is this an economic issue, it is also a national security issue. We are importing more oil than we produce. This is not a healthy situation for shaping our foreign policy agenda. If our domestic industry is to survive, then Congress needs to act now to provide tax incentives to encourage energy production in America.

To reverse these trends and increase our energy independence, I have worked on a bipartisan basis to develop the Domestic Energy Production Security and Stabilization Act. The bill provides tax incentives in our significant areas to ensure that our domestic energy infrastructure is not decimated during prolonged periods of low energy prices.

First, the legislation would provide a \$3 dollar a barrel tax credit, on the first three barrels that can offset the cost of keeping marginal wells operating during periods of critically low oil and gas prices. Marginal wells are those that produce 15 barrels a day or less. There are close to 500,000 such wells across the U.S. that collectively produce 20 percent of America's oil, more oil than we import from Saudi Arabia.

Second, the bill would provide some relief from the alternative minimum tax (AMT), again during prolonged periods of low energy prices. In a time of financial crisis for the oil and gas in-

dustry, this tax has had the effect of exacerbating the impact of low commodity prices and driving even more producers out of business. The AMT was enacted to ensure that companies reporting large financial income paid at least some level of taxes. Unfortunately, for the oil and gas industry, the AMT has only served to make a bad situation worse.

Third, Mr. President, this legislation would change the net income limitation on percentage depletion by eliminating the 65 percent taxable income limitation. Carried-over percentage depletion could also be carried back ten years. This would enable companies to fully utilize their percentage depletion allowance, which many have not been able to do since the onset of the oil and gas crisis.

Finally, Mr. President, this bill brings the U.S. Tax Code in line with the present-day realities of the oil and gas industry by allowing oil and gas exploration (geological and geophysical) costs to be expensed rather than capitalized, and by allowing delay rental lease payments to be deducted in the year in which they are paid, rather than when the oil is actually pumped. Even the Treasury Department has tacitly endorsed these proposed changes as making for sound economic and tax policy.

Taken together, these four major tax provisions will help the job-creating oil and gas sector of the economy to withstand the volatility of the international oil and gas markets. We simply must not allow our nation to become even more dependent on foreign oil. Nor can we afford to shut-down our domestic gas production capability, particularly since natural gas consumption is expected to grow rapidly in the near future, and, unlike oil, natural gas is not imported.

Mr. President, this legislation is long overdue, and I appreciate the support of Senator BREAUX and my other colleagues who are cosponsoring the bill. Most importantly, I urge my other colleagues, particularly those from non-energy producing states, to join with us in supporting this effort. America simply has too much at stake to stand by and let our domestic oil and gas industry jobs and infrastructure be lost to the whims of the world markets.●

● Mr. BREAUX. Mr. President, I am pleased to join with the distinguished Senator from the State of Texas, Senator HUTCHINSON, in introducing the Domestic Energy Production Security and Stabilization Act. I believe it is legislation all of our colleagues should support.

First, I'd like to outline the problem and then discuss how this legislation helps address it. Oil prices may be in the early stages of recovery, but over the last 17 months, a glut in the world market forced crude oil prices down to their lowest inflation-adjusted levels in

50 years. The Independent Petroleum Association of America estimates that, since November 1997, when the price of oil began to decline, more than 136,000 crude oil wells and more than 57,000 natural gas wells have been shut down.

The U.S. petroleum industry last year lost almost 30,000 jobs because of falling crude prices, according to the American Petroleum Institute's annual report. Despite the recent rise in oil prices, job losses continue. Another 3,600 jobs were lost between February and March. This brings the loss since December 1997 to about 54,400 jobs, a decline of 16 percent. In the first three months of 1999, losses amounted to about 24,000 jobs, or a drop of almost 8 percent.

Mr. President, independent producers account for almost a third of Gulf of Mexico oil production on the outer continental shelf (OCS), and almost half of natural gas production. According to the Minerals Management Service, on a per-day basis, the OCS accounts for 27 percent of the nation's natural gas production and 20 percent of the nation's crude oil production. In 1997, production on the federal OCS off Louisiana resulted in \$2.9 billion or 83 percent of the \$3.5 billion royalties received for all of the OCS. It is not difficult to see that as domestic production falls, so will federal royalty receipts.

And, let's not forget the thousands of jobs created in non-energy sectors to service the energy industry: computers, steel and other metals, transportation, financial and other service industries. When domestic oil and gas production increases, so does the number of jobs created in all these sectors.

This legislation will provide marginal well tax credits, alternative minimum tax relief, expensing of geological and geophysical costs and delay rental payments and other measures to encourage domestic oil and gas production. It is a safety net. The bill's provisions phase in and out as oil prices fall and rise between \$17 and \$14 per barrel and natural gas prices fall and rise between \$1.86 and \$1.56 per thousand cubic feet. It will provide a permanent mechanism to help our domestic producers cope with substantial and unexpected declines in world energy prices.

Let's examine how one aspect of this bill—marginal well production—affects this nation. A marginal well is one that produces 15 barrels of oil per day or 60,000 cubic feet of natural gas or less. Low prices hit marginal wells especially hard because they typically have low profit margins. While each well produces only a small amount, marginal wells account for almost 25 percent of the oil and 8 percent of the natural gas produced in the continental United States. The United States has more than 500,000 marginal wells that collectively produce nearly 700 million barrels of oil each year.

These marginal wells contribute nearly \$14 billion a year in economic activity. The marginal well industry is responsible for more than 38,000 jobs and supports thousands of jobs outside the industry.

The National Petroleum Council is a federal advisory committee to the Secretary of Energy. Its sole purpose is to advise, inform, and make recommendations to the Secretary of Energy on any matter requested by the Secretary with relating to oil and natural gas or to the oil and natural gas industries. The National Petroleum Council's 1994 Marginal Well Report said that:

Preserving marginal wells is central to our energy security. Neither government nor the industry can set the global market price of crude oil. Therefore, the nation's internal cost structure must be relied upon for preserving marginal well contributions.

The 1994 Marginal Well Report went on to recommend a series of tax code modifications including a marginal well tax credit and expensing key capital expenditures. The Independent Petroleum Association of America estimates that as many of half the estimated 140,000 marginal wells closed in the last 17 months could be lost for good.

Mr. President, the facts speak for themselves. The U.S. share of total world crude oil production fell from 52 percent in 1950 to just 10 percent in 1997. At the same time, U.S. dependence on foreign oil has grown from 36 percent in 1973 (the time of the Arab oil embargo) to about 56 percent today. That makes the U.S. more vulnerable than ever—economically and militarily—to disruptions in foreign oil supplies. This legislation will provide a mechanism to help prevent a further decline in domestic energy production and preserve a vital domestic industry.●

● Mr. GRAMM. Mr. President, I am pleased to join Senator KAY BAILEY HUTCHISON and a number of other colleagues in the introduction of legislation which we believe will provide critically needed relief and assistance to our beleaguered domestic oil industry.

Our bill contains a number of incentives designed to increase domestic production of oil and gas. The decline in domestic oil production has resulted in the estimated loss of more than 40,000 jobs in the oil and gas industry since the crash of oil prices at the end of 1997. Our legislation will not only put people back to work, it will revitalize domestic energy production and decrease our dependence on imports.

I have sought relief for the oil and gas industry from a number of sources this year. As a member of the Senate Budget Committee, I strongly opposed the \$4 billion tax which the Clinton budget proposed to levy on the oil industry. As my colleagues know, that tax is now dead.

Earlier this year I contacted Secretary of State Madeleine Albright and urged her to conduct a thorough review of our current policy which permits Iraq to sell \$5.25 billion worth of oil every six months. The revenue generated from such sales is supposed to be used to purchase food and medicine but reports make it clear that Saddam Hussein has diverted these funds from their intended use and that they are being used to prop up his murderous regime. The United States should not be a party to such a counterproductive policy.

Senator HUTCHISON and I earlier this year introduced legislation which contained a series of tax law changes intended to spur marginal well production. The legislation which we introduce today contains those provisions as well as others, such as reducing the impact of the Alternative Minimum Tax (AMT) on the oil and gas industry and relaxing the existing constraints on use of the allowance for percentage depletion.

I am looking forward to working with my colleagues in an effort to enact the legislation as soon as possible.●

By Mr. MCCAIN:

S. 1043. A bill to provide freedom from regulation by the Federal Communications Commission for the Internet; to the Committee on Commerce, Science, and Transportation.

THE INTERNET REGULATORY FREEDOM ACT

Mr. MCCAIN. Mr. President, I rise today to introduce The Internet Regulatory Freedom Act of 1999. This legislation will help assure that the enormous benefits of advanced telecommunications services are accessible to all Americans, no matter where they live, what they do, or how much they earn.

Advanced telecommunications is a critical component of our economic and social well-being. Information technology now accounts for over one-third of our economic growth. The estimates are that advanced, high-speed Internet services, once fully deployed, will grow to a \$150 billion a year market.

What this means is simple: Americans with access to high-speed Internet service will get the best of what the Internet has to offer in the way of online commerce, advanced interactive educational services, telemedicine, telecommuting, and video-on-demand. But what it also means is that Americans who don't have access to high-speed Internet service won't enjoy these same advantages.

Mr. President, Congress cannot stand idly by and allow that to happen.

Advanced high-speed data service finally gives us the means to assure that all Americans really are given a fair shake in terms of economic, social, and educational opportunities. Information

Age telecommunications can serve as a great equalizer, eliminating the disadvantages of geographic isolation and socioeconomic status that have carried over from the Industrial Age. But unless these services are available to all Americans on fair and affordable terms, Industrial Age disadvantages will be perpetuated, not eliminated, in the Information Age.

As things now stand, however, the availability of advanced high-speed data service on fair and affordable terms is seriously threatened. Currently, only 2 percent of all American homes are served by networks capable of providing high-speed data service. Of this tiny number, most get high-speed Internet access through cable modems. This is a comparatively costly service—about \$500 per year—and most cable modem subscribers are unable to use their own Internet service provider unless they also buy the same service from the cable system's own Internet service provider. This arrangement puts high-speed Internet service beyond the reach of Americans not served by cable service, and limits the choices available to those who are.

If this situation is allowed to continue, many Americans who live in remote areas or who don't make a lot of money won't get high-speed Internet service anywhere near as fast as others will. And, given how critical high-speed data service is becoming to virtually every segment of our everyday lives, creating advanced Internet "haves" and "have nots" will perpetuate the very social inequalities that our laws otherwise seek to eliminate.

This need not happen. Our nation's local telephone company lines go to almost every home in America, and local telephone companies are ready and willing to upgrade them to provide advanced high-speed data service.

They are ready and willing, Mr. President, but they are not able—at least, not as fully able as the cable companies are. That's because the local telephone companies operate under unique legal and regulatory restrictions. These restrictions are designed to limit their power in the local voice telephone market, but they are mistakenly being applied to the entirely different advanced data market. And as a result, their ability to build out these networks and offer these services is significantly circumscribed.

Mr. President, it's very expensive for to build high-speed data networks. Unnecessary regulation increases this already-steep cost and thereby limits the deployment of services to people and places that might otherwise receive them—and many of them are people and places that won't otherwise be served. This legislation will get rid of this unnecessary regulation, thereby facilitating the buildout of the advanced data networks necessary to give more Americans access to high-speed

Internet service at a cheaper price and with a greater array of service possibilities.

That's called "competition," Mr. President, and some people don't like it very much. AT&T, for example, owns cable TV giant TCI and its proprietary Internet service provider @Home. AT&T doesn't face the same regulatory restrictions as the telephone companies do, and AT&T will fight furiously to retain these restrictions so that it can continue to enjoy the "first-move" advantage it now has in the market for high-speed Internet service. So will other local telephone company competitors such as MCI/Worldcom, many of whom, like AT&T, prefer gaming the regulatory process to competing in the marketplace.

They're right about one thing, Mr. President—competition sure isn't nice. It's tough. Some companies win, and some companies lose. But the important thing to me is this: with competition, consumers win.

The 1996 Telecommunications Act effectively nationalized telephone industry competition. That's one of the many reasons I voted against it. As subsequent events have shown, the Act has been a complete and utter failure insofar as most Americans are concerned. All the average consumer has gotten are higher prices for many existing services, with little or no new competitive offerings. Most of the advantages have accrued to gigantic, constantly-merging telecommunications companies and the big business customers they serve.

Mr. President, we must not let this misguided law produce the same misbegotten results when it comes to making high-speed data services available and affordable to all Americans. The service is too important, and the stakes are too high.

Even the former Soviet Union managed to recognize that centralized planning was a flat failure, and abandoned it decades ago. It's time we started doing the same with centralized competition planning under the 1996 Act, and advanced data services are the best place to start. Unfettered competition, not federally-micromanaged regulation, is the best way of making sure that high-speed data services will be widely available and affordable. That's what I want, that's what consumers deserve, and that's what this legislation will do.

The first is the fact that the high-speed cable modem service being rolled out by AT&T on many of the nation's cable television systems favors its own proprietary Internet service provider, which limits consumer choice. Although AT&T's cable customers can access AOL or other Internet service providers of their own choice, they must first pass through, and pay for, AT&T's own Internet service provider, @Home. The fact that it typically

costs around \$500 a year to subscribe to @Home is a big disincentive to paying even more to access another service provider.

The second problem is every bit as troubling. Even though cable subscribers have only limited choice in accessing high-speed Internet service, 98 percent of Americans are even worse off, because they aren't served by any network that can carry high-speed Internet services.

Obviously, Mr. President, telephone networks serve almost everybody, and the large telephone companies very much want to convert their networks and make these services available to subscribers who might not otherwise get them, especially in rural and low-income areas, and also provide competitive alternatives for AT&T's cable modem subscribers. But, although AT&T can roll out cable modem service in a virtually regulation-free environment, federal regulation significantly impedes the ability of telephone companies to do the same thing.

Mr. President, this is blatantly unfair to the telephone companies—but that's not the worst of it. The benefits of business development, employment, and economic growth will go where the advanced data networks go. If these benefits go to urbanized, high-income areas first, the resulting disparities may well be difficult, if not impossible, to equalize.

Mr. President, I ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1043

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Regulatory Freedom Act of 1999".

SECTION 2. PURPOSE.

The purpose of this Act is to eliminate unnecessary regulation that impedes making advanced Internet service available to all Americans at affordable rates.

SECTION 3. PROVISIONS OF INTERNET SERVICES.

Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following:

"SEC. 231. PROVISION OF INTERNET SERVICES.

"(a) POLICY.—Since Internet services are inherently interstate in nature, it is the policy of the United States to assure that all Americans have the opportunity to benefit from access to advanced Internet service at affordable rates by eliminating regulation that impedes the competitive deployment of advanced broadband data networks.

"(b) FREEDOM FROM REGULATION; LIMITATIONS ON COMMISSION'S AUTHORITY.—Notwithstanding any other provision, including section 271, of this Act, nothing in this Act applies to, or grants authority to Commission with respect to—

"(1) the imposition of wholesale discount obligations on bulk offerings of advanced services to providers of Internet services or telecommunications carriers under section

251(c)(4), or the duty to provide as network elements, under section 251(c)(3), the facilities and equipment used exclusively to provide Internet services;

“(2) technical standards or specifications for the provisions of Internet services; or

“(3) the provision of Internet services.

“(c) INTERNET SERVICES DEFINED.—In this section, the term ‘Internet services’ means services, other than voice-only telecommunication services, that consist of, or include—

“(1) the transmission of writing, signs, signals, pictures, or sounds by means of the Internet or any other network that includes Internet protocol-based or other packet-switched or equivalent technology, including the facilities and equipment exclusively used to provide those services; and

“(2) the transmission of data between a user and the Internet or such other network.

“(d) ISP NOT A PROVIDER OF INTRASTATE COMMUNICATION SERVICES.—A provider of Internet services may not be considered to be a carrier providing intrastate communication service described in section 2(b)(1) because it provides Internet services.”.

By Mr. KENNEDY:

S. 1044. A bill to require coverage for colorectal cancer screenings; to the Committee on Health, Education, Labor, and Pensions.

THE ELIMINATE COLORECTAL CANCER ACT OF 1999

• Mr. KENNEDY. Mr. President, today we are introducing a bill that will require all private insurers to provide coverage for screening tests for colorectal cancer. More than 56,000 Americans die from colon cancer each year and we know that the vast majority of these tragedies could have been prevented by early detection and treatment.

Millions of Americans are at risk of contracting colon cancer during their lifetime. Persons over age 50 are particularly vulnerable, and so are family members of those who have had this illness. Effective treatments are well-established for this disease, but it must be detected early in order for the treatment to be successful.

Unfortunately, fewer than 20 percent of Americans take advantage of the routine screening tests that can identify those who have the disease or who are at risk. Too many physicians fail to recommend or even mention it. The cost of screening those at risk is minor compared to the savings gained by reducing the overall costs of treatment, suffering, lost productivity, and premature death.

As many colon cancer survivors have told us, early recognition and treatment are essential to winning this battle. Over 90% of people who have been diagnosed as a result of these screening tests and then treated for this cancer have resumed active and productive lives.

People on Medicare already have the right to these screening tests. The legislation we are introducing today will extend the same benefit to everyone else who has private insurance coverage. Under our proposal, coverage for screening tests will be available to

anyone over age 50, and also to younger persons who are at risk for the disease or who have specific symptoms. The type of tests and frequency of tests would be determined by the doctor and the patient. This is a very reasonable and cost-effective measure that is essential to prevent thousands of unnecessary deaths.

Our bill has already received support and endorsements from all the major gastrointestinal professional organizations, the American Cancer Society, the American Gastroenterological Association, the Cancer Research Foundation of America, the American Society for Gastrointestinal Endoscopy, the American Society of Colon and Rectal Surgeons, STOP Colon and Rectal Cancer Foundation, the United Ostomy Association, the Colon Cancer Alliance, Cancer Care, Inc., and the American Association of Homes and Services for the Aging.

A companion bill is being introduced in the House with the bipartisan leadership of my respected colleagues, Congresswomen LOUISE SLAUGHTER and CONNIE MORELLA. They have rightly emphasized that this disease is one that affects women as much as men. I look forward to working with them and my colleagues here in the Senate to get this very important protective legislation passed. •

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. KERREY, and Mr. ROBB):

S. 1045. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on persons who acquire structured settlement payments in factoring transactions, and for other purposes; to the Committee on Finance.

STRUCTURED SETTLEMENT PROTECTION ACT

Mr. CHAFEE. Mr. President, today I am introducing the Structured Settlement Protection Act, together with Senators BAUCUS, GRASSLEY, ROCKEFELLER, BREAUX, and KERREY of Nebraska. Companion legislation has been introduced in the House as H.R. 263, sponsored by Representatives CLAY SHAW and PETE STARK and a broad bipartisan group of Members of the House Ways and Means Committee.

The Act protects structured settlements and the injured victims who are the recipients of the structured settlement payments from the problems caused by a growing practice known as structured settlement factoring.

Structured settlements were developed because of the pitfalls associated with the traditional lump sum form of recovery in serious personal injury cases. All too often a lump sum meant to last for decades or even a lifetime swiftly eroded away. Structured settlements have proven to be a very valuable tool. They provide long-term financial security in the form of an assured stream of payments to persons

suffering serious, often profoundly disabling, physical injuries. These payments enable the recipients to meet ongoing medical and basic living expenses without having to resort to the social safety net.

Congress has adopted special tax rules to encourage and govern the use of structured settlements in physical injury cases. By encouraging the use of structured settlements Congress sought to shield victims and their families from pressures to prematurely dissipate their recoveries. Structured settlement payments are non-assignable. This is consistent with worker's compensation payments and various types of federal disability payments which are also non-assignable under applicable law. In each case, this is done to preserve the injured person's long-term financial security.

I am very concerned that in recent months there has been sharp growth in so-called structured settlement factoring transactions. In these transactions, companies induce injured victims to sell off future structured settlement payments for a steeply-discounted lump sum, thereby unraveling the structured settlement and the crucial long-term financial security that it provides to the injured victim. These factoring company purchases directly contravene the intent and policy of Congress in enacting the special structured settlement tax rules. The Treasury Department shares these concerns and has included a similar proposal in the Administration's FY 2000 budget.

An article in the January 25 issue of U.S. News & World Report highlights the growing problem of structured settlement purchases. Orion Olson was bitten by a dog when he was three years old. The dog bite caused him vision and neurological problems. The settlement resulting from his lawsuit called for Mr. Olson to receive \$75,000 in periodic payments once he turned 18. Unfortunately, Mr. Olson was lured into selling his payments for a lump sum payment of \$16,100. Within six months this money was gone and Mr. Olson was living in a car.

Last year, the National Spinal Cord Injury Association wrote to the Chairman of the Finance Committee strongly supporting the legislation. They stated: [o]ver the past 16 years, structured settlements have proven to be an ideal method for ensuring that persons with disabilities, particularly minors, are not tempted to squander resources designed to last years or even a lifetime. That is why the National Spinal Cord Injury Association is so deeply concerned about the emergence of companies that purchase payments intended for disabled persons at drastic discount. This strikes at the heart of the security Congress intended when it created structured settlements.”

The legislation we are introducing would impose a substantial penalty tax

on a factoring company that purchases the structured settlement payments from the injured victim. This is a penalty, not a tax increase. Similar penalties are imposed in a variety of other contexts in the Internal Revenue Code to discourage transactions that undermine Code provisions, such as private foundation prohibited transactions and greenmail. The factoring company would pay the penalty only if it engages in the transaction that Congress has sought to discourage. An exception is provided for genuine court-approved hardship cases to protect the limited instances where a true hardship warrants the sale of future structured settlement payments.

This bipartisan legislation, which is supported by the Treasury Department, should be enacted as soon as possible to stem this growing nationwide problem.

Mr. President, I ask unanimous consent that a copy of the bill, a summary of the legislation and the article from U.S. News & World Report be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 1045

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the “Structured Settlement Protection Act”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. IMPOSITION OF EXCISE TAX ON PERSONS WHO ACQUIRE STRUCTURED SETTLEMENT PAYMENTS IN FACTORING TRANSACTIONS.

Subtitle E is amended by adding at the end the following new chapter:

“CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

“Sec. 5891. Structured settlement factoring transactions.

“SEC. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

“(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 50 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

“(b) EXCEPTION FOR COURT-APPROVED HARDSHIP.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is—

“(1) otherwise permissible under applicable law, and

“(2) undertaken pursuant to the order of the relevant court or administrative authority finding that the extraordinary, unantic-

pated, and imminent needs of the structured settlement recipient or the recipient's spouse or dependents render such a transfer appropriate.

“(c) DEFINITIONS.—For purposes of this section—

“(1) STRUCTURED SETTLEMENT.—The term ‘structured settlement’ means an arrangement—

“(A) established by—

“(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

“(ii) agreement for the periodic payment of compensation under any workers' compensation act that is excludable from the gross income of the recipient under section 104(a)(1), and

“(B) where the periodic payments are—

“(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

“(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

“(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term ‘structured settlement payment rights’ means rights to receive payments under a structured settlement.

“(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—The term ‘structured settlement factoring transaction’ means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

“(4) FACTORING DISCOUNT.—The term ‘factoring discount’ means an amount equal to the excess of—

“(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

“(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

“(5) RELEVANT COURT OR ADMINISTRATIVE AUTHORITY.—The term ‘relevant court or administrative authority’ means—

“(A) the court (or where applicable, the administrative authority) which had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement, or

“(B) in the event that no action or proceeding was brought, a court (or where applicable, the administrative authority) which—

“(i) would have had jurisdiction over the claim that is the subject of the structured settlement, or

“(ii) has jurisdiction by reason of the residence of the structured settlement recipient.

“(d) COORDINATION WITH OTHER PROVISIONS.—

“(1) IN GENERAL.—In any case where the applicable requirements of sections 72, 130, and 461(h) were satisfied at the time the structured settlement was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

“(2) REGULATIONS.—The Secretary is authorized to prescribe such regulations as may be necessary to clarify the treatment in the event of a structured settlement fac-

toring transaction of amounts received by the structured settlement recipient.”

SEC. 3. TAX INFORMATION REPORTING OBLIGATIONS.

Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

“SEC. 6050T. REPORTING REQUIREMENTS REGARDING STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

“(a) IN GENERAL.—In the case of a transfer of structured settlement payment rights in a structured settlement factoring transaction—

“(1) described in section 5891(b) and of which the person making the structured settlement payments has actual notice and knowledge, such person shall make such return and furnish such written statement to the acquirer of the structured settlement payment rights as would be applicable under the provisions of section 6041 (except as provided in subsection (c) of this section), or

“(2) subject to tax under section 5891(a) and of which the person making the structured settlement payments has actual notice and knowledge, such person shall make such return and furnish such written statement to the acquirer of the structured settlement payment rights at such time, and in such manner and form, as the Secretary shall by regulations prescribe.

“(b) COORDINATION WITH OTHER PROVISIONS.—The provisions of this section shall apply in lieu of any other provisions of this part to establish the reporting obligations of the person making the structured settlement payments in the event of a structured settlement factoring transaction. The provisions of section 3405 regarding withholding shall not apply to the person making the structured settlement payments in the event of a structured settlement factoring transaction.

“(c) DEFINITION.—For purposes of this section, the term ‘acquirer of the structured settlement payment rights’ shall include any person described in section 7701(a)(1).”

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall be effective with respect to structured settlement factoring transactions (as defined in section 5891(c)(3) of the Internal Revenue Code of 1986, as added by this Act) occurring after the date of enactment of this Act.

SUMMARY OF THE STRUCTURED SETTLEMENT PROTECTION ACT

1. STRINGENT EXCISE TAX ON PERSONS WHO ACQUIRE STRUCTURED SETTLEMENT PAYMENTS IN FACTORING TRANSACTIONS

Factoring company purchases of structured settlement payments so directly subvert the Congressional policy underlying structured settlements and raise such serious concerns for the injured victims that it is appropriate to impose a stringent excise tax against the amount of the discount reflected in the factoring transaction (subject to a limited exception described below for genuine court-approved hardships). Accordingly, the Act would impose on the factoring company that acquires structured settlement payments directly or indirectly from the injured victim an excise tax equal to 50 percent of the difference between (i) the total amount of the structured settlement payments purchased by the factoring company, and (ii) the heavily-discounted lump sum paid by the factoring company to the injured victim.

Similar to the stiff excise taxes imposed on prohibited transactions in the private foundation and pension contexts—which can range as high as 100 to 200 percent—this

stringent excise tax is necessary to address the very serious public policy concerns raised by structured settlement factoring transactions.

The excise tax under the Act would apply to the factoring of structured settlements in tort cases and in workers' compensation. A structured settlement factoring transaction subject to the excise tax is broadly defined under the Act as a transfer of structured settlement payment rights (including portions of payments) made for consideration by means of sale, assignment, pledge, or other form of alienation or encumbrance for consideration.

2. EXCEPTION FROM EXCISE TAX FOR GENUINE, COURT-APPROVED HARDSHIP

The stringent excise tax would be coupled with a limited exception for genuine, court-approved financial hardship situations. The excise tax would apply to factoring companies in all structured settlement factoring transactions except those in which the transfer of structured settlement payment rights (1) is otherwise permissible under applicable Federal and State law and (2) is undertaken pursuant to the order of a court (or where applicable, an administrative authority) finding that the extraordinary, unanticipated, and imminent needs of the structured settlement recipient or his or her spouse or dependents render such a transfer appropriate.

This exception is intended to apply to the limited number of cases in which a genuinely extraordinary, unanticipated, and imminent hardship has actually arisen and been demonstrated to the satisfaction of a court (e.g., serious medical emergency for a family member). In addition, as a threshold matter, the transfer of structured settlement payment rights must be permissible under applicable law, including State law. The hardship exception under this legislation is not intended to override any Federal or State law prohibition or restriction on the transfer of the payment rights or to authorize factoring of payment rights that are not transferable under Federal or State law. For example, the States in general prohibit the factoring of workers' compensation benefits. In addition, State laws often prohibit or directly restrict transfers of recoveries in various types of personal injury cases, such as wrongful death and medical malpractice.

The relevant court for purposes of the hardship exception would be the original court which had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement. In the event that no action had been brought prior to the settlement, the relevant court would be that which would have had jurisdiction over the claim that is the subject of the structured settlement or which would have jurisdiction by reason of the residence of the structured settlement recipient. In those limited instances in which an administrative authority adjudicates, resolves, or otherwise has primary jurisdiction over the claim (e.g., the Vaccine Injury Compensation Trust Fund), the hardship matter would be the province of that applicable administrative authority.

3. NEED TO PROTECT TAX TREATMENT OF ORIGINAL STRUCTURED SETTLEMENT

In the limited instances of extraordinary and unanticipated hardship determined by court order to warrant relief under the hardship exception, adverse tax consequences should not be visited upon the other parties to the original structured settlement. In addition, despite the anti-assignment provi-

sions included in the structured settlement agreements and the applicability of a stringent excise tax on the factoring company, there may be a limited number of non-hardship factoring transactions that still go forward. If the structured settlement tax rules under I.R.C. Sections 72, 130 and 461(h) had been satisfied at the time of the structured settlement, the original tax treatment of the other parties to the settlement—i.e., the settling defendant (and its liability insurer) and the Code section 130 assignee—should not be jeopardized by a third party transaction that occurs years later and likely unbeknownst to these other parties to the original settlement.

Accordingly, the Act would clarify that if the structured settlement tax rules under I.R.C. Sections 72, 130, and 461(h) had been satisfied at the time of the structured settlement, the section 130 exclusion of the assignee, the section 461(h) deduction of the settling defendant, and the Code section 72 status of the annuity being used to fund the periodic payments would remain undisturbed. That is, the assignee's exclusion of income under Code section 130 arising from satisfaction of all of the section 130 qualified assignment rules at the time the structured settlement was entered into years earlier would not be challenged. Similarly, the settling defendant's deduction under Code section 461(h) of the amount paid to the assignee to assume the liability would not be challenged. Finally, the status under Code section 72 of the annuity being used to fund the periodic payments would remain undisturbed.

The Act provides the Secretary of the Treasury with regulatory authority to clarify the treatment of a structured settlement recipient who engages in a factoring transaction. This regulatory authority is provided to enable Treasury to address issues raised regarding the treatment of future periodic payments received by the structured settlement recipient where only a portion of the payments has been factored away, the treatment of the lump sum received in a factoring transaction qualifying for the hardship exception, and the treatment of the lump sum received in the non-hardship situation. It is intended that where the requirements of section 130 are satisfied at the time the structured settlement is entered into, the existence of the hardship exception to the excise tax under the Act shall not be construed as giving rise to any concern over constructive receipt of income by the injured victim at the time of the structured settlement.

4. TAX INFORMATION REPORTING OBLIGATIONS WITH RESPECT TO A STRUCTURED SETTLEMENT FACTORING TRANSACTION

The Act would clarify the tax reporting obligations of the person making the structured settlement payments in the event that a structured settlement factoring transaction occurs. The Act adopts a new section of the Code that is intended to govern the payor's tax reporting obligations in the event of a factoring transaction.

In the case of a court-approved transfer of structured settlement payments of which the person making the payments has actual notice and knowledge, the fact of the transfer and the identity of the acquirer clearly will be known. Accordingly, it is appropriate for the person making the structured settlement payments to make such return and to furnish such tax information statement to the new recipient of the payments as would be applicable under the annuity information reporting procedures of Code section 6041 (e.g., form 1099-R), because the payor will have the

information necessary to make such return and to furnish such statement.

Despite the anti-assignment restrictions applicable to structured settlements and the applicability of a stringent excise tax, there may be a limited number of non-hardship factoring transactions that still go forward. In these instances, if the person making the structured settlement payments has actual notice and knowledge that a structured settlement factoring transaction has taken place, the payor would be obligated to make such return and to furnish such written statement to the payment recipient at such time, and in such manner and form, as the Secretary of the Treasury shall by regulations provide. In these instances, the payor may have incomplete information regarding the factoring transaction, and hence a tailored reporting procedure under Treasury regulations is necessary.

The person making the structured settlement payments would not be subject to any tax reporting obligation if that person lacked such actual notice and knowledge of the factoring transaction. Under the Act, for purposes of the reporting obligations, the term acquirer of the structured settlement payment rights' would be broadly defined to include an individual, trust, estate, partnership, company, or corporation.

The provisions of section 3405 regarding withholding would not apply to the person making the structured settlement payments in the event that a structured settlement factoring transaction occurs.

5. EFFECTIVE DATE

The provisions of the Act would be effective with respect to structured settlement factoring transactions occurring after the date of enactment of the Act.

[From U.S. News & World Report, Jan. 25, 1999]

SETTLING FOR LESS

SHOULD ACCIDENT VICTIMS SELL THEIR MONTHLY PAYOUTS?

(By Margaret Mannix)

Orion Olson has had his share of hard knocks. When he was a 3 year old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling \$75,000 from a lawsuit stemming from the dog attack. He received the first installment of \$7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of \$67,500 to Wentworth for a lump sum of \$16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners, and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading

his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates, fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

Frittering away. Critics further allege that factoring companies undermine the very law that Congress passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than \$5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term care facilities. In 1992 it started buying settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of \$370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, \$50,000 in future payments, will not get a lump sum of \$50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the insurance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a \$500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She received instant cash of \$21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his won business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of \$1,100, with annual cost-of-living in-

creases of 3 percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Wentworth, selling portions of his monthly payments for the next 15 years in six different transactions.

Altogether White gave up future payments totaling \$198,000. He received a total of \$54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the 13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

Change of address. While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are not making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of \$59,000, beating Wentworth's offer of \$45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about having to pay twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—the insurance companies do—the factoring companies can buy the "right to receive" the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based

insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth's Philadelphia post office box—and some are trying to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth's case, the company has each customer sign a clause called a "confession of judgment," which allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his \$2,000 monthly payments for the next 32 months and \$1,500 for the 26 months after that. In exchange, Hicks received \$37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the entire amount of the deal—\$71,000.

No clue. To collect, Wentworth garnished Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks's monthly checks to Wentworth. It did not—the company won't say why—and Hicks, who was supposed to be getting \$1,000 back from Wentworth, was left with nothing. "When the money stopped, I had no clue what was going on," says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. "They make you think you are doing the right thing in the long run," says Hicks, "but you are really messing up your life."

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company's home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses are allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements "were not entered into for family, personal, or household purposes."

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is "illegal, usurious, and unconscionable." Wentworth says the clauses are necessary to keep its customers from renegeing on their agreements.

In the end, the controversy over factoring companies comes down to a fundamental disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau,

the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive from them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from high teens to the single digits," says Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment. . . . If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, disability groups like the National Spinal Cord Injury Association, which now refuses to accept factoring companies' advertisements in its magazine, are warning members about the hazards of cashing out. The association is "deeply concerned about the emergency of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every request for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into.

• **Mr. BAUCUS.** Mr. President, I am pleased to join today with Senator CHAFEE and a bipartisan group of our colleagues from the Finance Committee in introducing the Structured Settlement Protection Act.

Companion legislation has been introduced in the House (H.R. 263) by Representatives CLAY SHAW and PETE STARK. The House legislation is cosponsored by a broad bipartisan group of Members of the House Ways and Means Committee.

The Treasury Department supports this bipartisan legislation.

I speak today as the original Senate sponsor of the structured settlement tax rules that Congress enacted in 1982. I rise because of my very grave concern that the recent emergence of structured settlement factoring transactions—in which favoring companies buy up the structured settlement payments from injured victims in return for a deeply-discounted lump sum—complete undermines what Congress intended when we enacted these structured settlement tax rules.

In introducing the original 1982 legislation, I pointed to the concern over the premature dissipation of lump sum recoveries by seriously-injured victims and their families:

In the past, these awards have typically been paid by defendants to successful plaintiffs in the form of a single payment settlement. This approach has proven unsatisfactory, however, in many cases because it assumes that injured parties will wisely manage large sums of money so as to provide for their lifetime needs. In fact, many of these successful litigants, particularly minors, have dissipated their awards in a few years and are then without means of support. [CONGRESSIONAL RECORD (daily ed.) 12/10/81, at S15005.]

I introduced the original legislation to encourage structured settlements because they provide a better approach, as I said at the time: "Periodic payment settlements, on the other hand, provide plaintiffs with a steady income over a long period of time and insulate them from pressures to squander their awards." (Id.)

Thus, our focus in enacting these tax rules in section 104(a)(2) and 130 of the Internal Revenue Code was to encourage and govern the use of structured settlements in order to provide long-term financial security to seriously-injured victims and their families and to insulate them from pressures to squander their awards.

Over the almost two decades since we enacted these tax rules, structured settlements have proven to be a very effective means of providing long-term financial protection to persons with serious, long-term physical injuries through an assured stream of payments designed to meet the victim's ongoing expenses for medical care, living, and family support. Structured settlements are voluntary agreements reached between the parties that are negotiated by counsel and tailored to meet the specific medical and living needs of the victim and his or her family, often with the aid of economic experts. This process may be overseen by the court, particularly in minor's cases. Often,

the structured settlement payment stream is for the rest of the victim's life to ensure that future medical expenses and the family's basic living needs will be met and that the victim will not outlive his or her compensation.

I now find that all of this careful planning and long-term financial security for the victim and his or her family can be unraveled in an instant by a factoring company offering quick cash at a steep discount. What happens next month or next year when the lump sum from the factoring company is gone, and the stream of payments for future financial support is no longer coming in? These structured settlement factoring transactions place the injured victim in the very predicament that the structured settlement was intended to avoid.

Court records show that across the country factoring companies are buying up future structured settlement payments from persons who are quadriplegic, paraplegic, have traumatic brain injuries or other grave injuries. That is why the National Spinal Cord Injury Association and the American Association of Persons With Disabilities (AAPD) actively support the legislation we are introducing today. The National Spinal Cord Injury Association stated in a recent letter to Chairman ROTH of the Finance Committee that the Spinal Cord Injury Association is "deeply concerned about the emergency of companies that purchase payments intended for disabled persons at drastic discount. This strikes at the heart of the security Congress intended when it created structured settlements."

As a long-time supporter of structured settlements and an architect of the Congressional policy embodied in the structured settlement tax rules, I cannot stand by as this structured settlement factoring problem continues to mushroom across the country, leaving injured victims without financial means for the future and forcing the injured victims onto the social safety net—precisely the result that we were seeking to avoid when we enacted the structured settlement tax rules.

Accordingly, I am pleased to join with Senator CHAFEE in introducing the Structured Settlement Protection Act. The legislation would impose a substantial penalty tax on a factoring company that purchases structured settlement payments from an injured victim. There is ample precedent throughout the Internal Revenue Code, such as the tax-exempt organization area, for the use of penalties to discourage transactions that undermine existing provisions of the Code. I would stress that this is a penalty, not a tax increase—the factoring company only pays the penalty if it undertakes the factoring transaction that Congress is seeking to discourage because the

transaction thwarts a clear Congressional policy. Under the Act, the imposition of the penalty would be subject to an exception for court-approved hardship cases to protect the limited instances of true hardship of the victim.

I urge my colleagues that the time to act is now, to stem as quickly as possible these harsh consequences that structured settlement factoring transactions visit upon seriously-injured victims and their families.●

By Mr. REED:

S. 1046. A bill to amend title V of the Public Health Service Act to revise and extend certain programs under the authority of the Substance Abuse and Mental Health Service Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

WRAP AROUND SERVICES FOR DETAINED OR
INCARCERATED YOUTH ACT OF 1999

Mr. REED. Mr. President, I rise today to introduce legislation that would help local communities coordinate services for juvenile offenders who are leaving the juvenile justice system and returning to their communities. This provision was included in the Robb amendment to S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, which was unfortunately tabled earlier this week.

The problem of mental illness plagues an alarming number of youth, who too often find themselves caught up in the juvenile justice system. While overall crime rates in this country have been in decline for the past few years, we have seen alarming increases in the number of serious and violent crimes committed by minors. Each year, more than two million youngsters under the age of 18 are arrested. What's more, statistics show that thirty percent of these young people will commit another crime within a year of their initial arrest.

Often, society views these young people, who have turned to crime at such an early age, as a "lost cause" or simply beyond hope of rehabilitation. The sad fact that often gets overlooked is that many of these youngsters are battling with a serious emotional or mental disorder that winds up manifesting itself in criminal behavior. We cannot condone this behavior, yet, we as a society have failed to dedicate the resources necessary to bring these children back from the edge of self-destruction.

The legislation I am introducing today would help local agencies to coordinate the array of mental health, substance abuse, vocational, and education services a youngster may need to successfully transition back into the mainstream. Once a youth has been through the juvenile or criminal justice system, we need to do all we can to

prevent a similar incident. If these children have been identified as having a mental or emotional disorder, they need to have access to appropriate treatment and services while they are incarcerated, but perhaps more imperatively when they leave incarceration. Turning these young people out on the street with no services to facilitate their transition does not help these children and does not help society as a whole.

Studies have found the rate of mental disorder is two to three times higher among the juvenile offender population than among youth in the general population. According to a 1994 Department of Justice study, 73 percent of juvenile offenders reported mental health problems and 57 percent reported past treatment for their condition. In addition, it is estimated that over 60 percent of youth in the juvenile justice system have substance abuse disorders, compared to 22 percent in the general population.

In an effort to bring desperately needed mental health services to this terribly underserved population, my legislation would authorize the Substance Abuse and Mental Health Services Administration (SAMHSA), in collaboration with the Departments of Justice and Education, to administer a competitive grant program that responds to the array of social and educational needs of children who are leaving the juvenile justice system.

These cooperative "wrap-around services" would enable juvenile justice agencies to work together with educational and health agencies to provide transitional services for youth who have had contact with the juvenile justice system, in order to decrease the likelihood that these young people will commit additional criminal offenses.

These services, which would be targeted toward youth offenders who have serious emotional disturbances or are at risk of developing such disturbances, could include diagnostic and evaluation services, substance abuse treatment, outpatient mental health care, medication management, intensive home-based therapy, intensive day treatment services, respite care, and therapeutic foster care.

I think it is important for my colleagues to note that this proposal is modeled after existing programs with a proven record of success. For instance, my home state of Rhode Island is one of four states (the others include California, Wisconsin, and Virginia) that has sought to target teens who have been diagnosed with a serious emotional disturbance and provide them with the services they need to get back on track.

The Rhode Island Department of Youth and Families last year initiated a statewide program called "Project Hope", for youth ages 12 to 18 with serious emotional disturbances who are

in the process of transitioning from the Rhode Island Training School back into their communities. The goal of the partnership is to develop a single, community-based system of care for these children to reduce the likelihood that they will re-offend. The program brings a core set of services to these young people that includes health care, substance abuse treatment, educational/vocational services, domestic violence and abuse support groups, recreational programs, and day care services. A key component in the program's strategy is to engage young people and their families in the planning and implementation of these transition services.

A similar program that has been in operation in Milwaukee, Wisconsin since 1994 has reported a 40 percent decline in the number of felonies committed and a 30% decrease in misdemeanors after providing comprehensive services to children with serious emotional disorders for one year.

This legislation would provide states with the resources and flexibility to start filing a critical service gap for youngsters who are leaving the juvenile justice system and re-entering their communities. The provisions of adequate transitional and aftercare services to prevent recidivism is essential to reducing the societal costs associated with juvenile delinquency, promoting teen health, and fostering safe communities.

I am pleased to introduce this legislation today. The provisions outlined in this bill will help community agencies to coordinate services, which will prevent these troubled juveniles from committing additional crimes and falling into a life on the fringes of society. It is in our best interest to take responsibility for these teens instead of turning our backs on them at such a critical stage.

By Mr. MURKOWSKI (for himself and Mr. BINGAMAN) (by request):

S. 1047. A bill to provide for a more competitive electric power industry and for other purposes; to the Committee on Energy and Natural Resources.

S. 1048. A bill to provide for a more competitive electric power industry, and for other purposes, to the Committee on Finance.

COMPREHENSIVE ELECTRICITY COMPETITION AND
TAX ACTS

Mr. MURKOWSKI. Mr. President, at the request of the Administration, Senator BINGAMAN and I are introducing the President's proposed electricity legislation. The Administration's legislation is being introduced as two separate bills because Title X of their proposed legislation amends the Internal Revenue Code. I will speak first with respect to the restructuring portion of the Administration's legislation, Titles I through IX.

Mr. President, I am not introducing the restructuring portion of the Administration's legislation because I support it—I do not. Some of its provisions I agree with, but many of its key provisions I am opposed to. Instead, I am introducing the Administration's legislation in order to initiate the debate in the hope that through the legislative process Congress can craft legislation that will enjoy bipartisan support and will benefit consumers.

At the outset, let me observe that our electric power industry isn't broken. We have the finest electric system in the world bar none. Our electric utilities have done an excellent job supplying electricity to the consumers of this Nation. As a result, today electricity is both reliable and reasonably-priced. But that isn't to say that improvements cannot, and should not, be made. I believe that consumers will benefit through enhanced competition. The key question we face is: Should we try to enhance competition through increased reliance on the free market, or through increased use of government regulation? I think the answer is self evident.

Although deregulation is our goal, some regulation will remain necessary to protect consumers. However, such regulation should not be made the exclusive jurisdiction of the Federal government, as some have suggested. The retail market has traditionally been the jurisdiction of the States, and it should remain that way. States are the closest to the people, and are best able to determine what is in their consumers' best interests. Let me speak now about some of the key provisions of the Administration's legislation.

There are several important components of the Administration's legislation that I strongly support. For example, it proposes to repeal the Public Utility Holding Company Act (PUHCA) and the Public Utility Regulatory Policies Act of 1978 (PURPA), two anti-competitive laws that cost consumers billions of dollars every year in above-market electric rates. If we do nothing else, repeal of PUHCA and PURPA would materially advance competition and reduce electric rates to consumers.

The Administration's legislation also shows a clear interest in addressing several contentious issues left out in their bill in the last Congress. For example, the Administration's legislation includes provisions that will begin the debate on what to do about the Federal utilities—the Federal power marketing administrations and the Tennessee Valley Authority. The Administration's legislation also takes a significant step forward by addressing the very difficult issue of creating a level playing field between municipal and private utilities—the tax-exempt municipal bond issue. This is an issue that must be dealt with. The Administration's bill also addresses reliability and

it makes all wholesale transmission open access, two very important matters. Also of note is the Administration's recognition of the need to deal with the high cost of electricity in rural communities. Senator DASCHLE and I have introduced legislation to deal with this problem, and the Administration's legislation incorporates part of our bill.

There are, however, several provisions in the Administration's legislation that I am opposed to. First, I do not support its Federal retail competition mandate which overrides State law. I see no need for this. The States are moving aggressively to implement retail competition in a manner and a time frame that benefits consumers. According to the DOE's Energy Information Administration, twenty States have already enacted restructuring legislation or issued a comprehensive regulatory order. More than half the U.S. population live in these twenty States. Again according to DOE's Energy Information Administration, twenty-eight of the remaining thirty States are in the process of deciding what is in the best interests of its residents. Accordingly I ask: With States making such good progress on retail competition what need is there for a Federal mandate—assuming such a mandate is Constitutional? Moreover, because the Administration's proposed mandate would apply even to the twenty States that have already acted, I am concerned that such a Federal mandate would upset the progress these States have made. In this connection, I am not convinced that the Administration's "opt-out" provision will in fact protect consumers from the adverse consequences of Federally-mandated retail competition.

Second, the bill's so-called "renewable portfolio mandate" is also a significant problem. For reasons that I do not understand, the Administration has decided to exclude hydroelectric power from the definition of renewable energy, even though hydro is this Nation's most significant renewable energy source. Without hydroelectric power being counted, to meet this new Federal mandate "renewable" generation would have to increase to 7.5 percent by the year 2010. Clearly, an impossibility.

Third, I am also troubled with the Administration's so-called "public benefits" fund. It puts a Federal \$3 billion per year tax on electric consumers, that a Federal board gets to spend for vaguely defined public purposes. It also appears to require a matching \$3 billion per year State expenditure. At the very outset, this eats up a very large share of the claimed consumer savings resulting from enactment of the Administration's bill.

Finally, the Administration's bill also contains numerous new Federal oversight, regulatory and environ-

mental programs, many of which give the Federal Energy Regulatory Commission major oversight—much of which comes at the expense of the States. There are far too many of these in the Administration's legislation to identify and discuss here. Some of these may be worthwhile, but clearly many are not. Each will have to be carefully scrutinized and will have to be justified on their own merits if it is to be included in a final bill. I will speak now about the tax provisions of the Administration's proposed legislation which I am introducing as a separate measure.

Mr. President, at the request of the Administration I am also introducing the portion of their electricity restructuring bill that deals with tax-exempt debt issued by municipal utilities. This is Title X of the Administration's proposed legislation. In addition, the Administration's bill clarifies the tax rules regarding contributions to nuclear decommissioning costs.

Mr. President, if consumers and businesses are to maximize the full benefits of open competition in this industry it will be necessary for all electricity providers to interconnect their facilities into the entire electric grid. Unfortunately, this system efficiency is significantly impaired because of current tax law rules that effectively preclude public power entities—entities that financed their facilities with tax-exempt bonds—from participating in State open access restructuring plans, without jeopardizing the exempt status of their bonds.

No one wants to see bonds issued to finance public power become retroactively taxable because a municipality chooses to participate in a state open access plan. That would cause havoc in the financial markets and could undermine the financial stability of many municipalities. At the same time, public power should be obtain a competitive advantage in the open marketplace based on the federal subsidy that flows from the ability to issue tax-exempt debt.

The Administration's proposal attempts to resolve this issue by prohibiting public power facilities from issuing new tax-exempt bonds for generating facilities and transmission facilities. However, tax exempt debt could be issued for new distribution facilities. In addition, the Administration's proposal ensures that outstanding bonds would not lose their tax-exempt status if transmission facilities violate the private use rules because of a FERC order requiring non-discriminatory open access to such facilities. Outstanding debt for generation would not lose its tax-exempt status if the private use rules were triggered simply because the entity entered into a contract in response to a marketplace based on competition.

Mr. President, I am not endorsing every concept in the tax portion of the

Administration's proposal. I believe it is a good starting point for discussion of how we transition from a regulated environment to a free market competitive landscape. It is my hope that the public power and the investor owned utilities will sit down and come to a reasonable compromise on how to resolve the tax issues affecting the industry. My door is always open to hear all sides on this issue and see whether we can fix the problems that exist in the tax code so that competition in the industry becomes a reality.

Mr. President, the introduction of the Administration's bill is just the beginning of a very long and arduous process. I hope to be able to work with the electric power industry, my Republican and Democratic colleagues to both the Finance Committee and the Energy and Natural Resources Committee, and DOE Secretary Richardson to craft legislation that will benefit consumers and our Nation.

Mr. President, I ask unanimous consent that the Administration's transmittal letter and section-by-section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

THE SECRETARY OF ENERGY,
Washington, DC, April 15, 1999.

Hon. AL GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation, the Comprehensive Electricity Competition Act (CECA), that will reduce electricity costs, benefit the economy, and improve the environment by promoting competition and consumer choice in the electricity industry.

The basic Federal regulatory framework for the electric power industry was established with the enactment in 1935 of the Public Utility Holding Company Act and Title II of the Federal Power Act. These statutes are premised upon State-regulated monopolies rather than competition. Now, however, economic forces are beginning to forge a new era in the electricity industry, one in which generation prices will be determined primarily by the market rather than by legislation and regulation. Consequently, Federal electricity laws need to be updated so that they stimulate, rather than stifle, competition.

In this new era of retail competition, consumers will choose their electricity supplier. The Administration estimates that consumers will save \$20 billion a year. Competition will also spark innovation in the American economy and create new industries, jobs, products, and services, just as telecommunications reform spawned cellular phones and other new technologies.

Competition also will benefit the environment. The market will reward a generator that wrings as much energy as possible from every unit of fuel. More efficient fuel use means lower emissions. In addition, competition provides increased opportunities to sell energy efficiency services and green power. Moreover, CECA's renewable portfolio standard and enhanced public benefit funding will lead to substantial environmental benefits.

The following are key provisions of CECA:

All electric consumers would be able to choose their electricity supplier by January

1, 2003, but a State or unregulated cooperative or municipal utility may opt out of retail competition if it believes its consumers would be better off under the status quo or an alternative retail competition plan.

States would be encouraged to allow the recovery of prudently incurred, legitimate, and verifiable retail stranded costs that cannot be reasonably mitigated.

The regions served by the Tennessee Valley Authority and the Federal Power Marketing Administrations would have greater access to alternative sources of power.

All consumers would have the opportunity to reap the full benefits of competition, because CECA would require retail suppliers to provide information regarding the service being offered; provide the Federal Trade Commission with the authority to prevent "slamming" and "cramming;" require States to consider implementing anti-redlining requirements; allow for aggregation; authorize the establishment of an electricity consumer database to help consumers compare various offers, and establish a Model Retail Supplier Code for States.

All users of the interstate transmission grid would be subject to mandatory reliability standards. The Federal Energy Regulatory Commission (FERC) would approve and oversee an organization that would develop and enforce these standards.

FERC would have the authority to require utilities to turn over operational control of transmission facilities to an independent regional system operator.

A Renewable Portfolio Standard would be established to ensure that by 2010 at least 7.5 percent of all electricity sales consist of generation from non-hydroelectric renewable energy sources.

A Public Benefits Fund would be established to provide matching funds of up to \$3 billion per year to States and Indian tribes for low-income energy assistance, energy-efficiency programs, consumer information, and the development and demonstration of emerging technologies, particularly renewable energy technologies. A rural safety net would be created if significant adverse economic effects on rural areas have occurred or will occur as a result of electric industry restructuring.

Indian tribes would receive additional support through the creation of a grant's program, the establishment of an Energy Policy and Programs Office of the Department of Energy, and special incentives for renewable energy production on Indian lands.

Barriers would be removed in order to encourage combined heat and power and distributed power technologies.

The Environmental Protection Agency would be given authority for interstate nitrogen oxides trading to facilitate attainment of the ambient air quality standard for ozone in the eastern United States.

Federal electricity laws would be modernized to achieve the right balance of competition without market abuse by repealing outdated laws including the Public Utility Holding Company Act of 1935 and the "must buy" provision of the Public Utility Regulatory Policies Act of 1978 and by giving FERC enhanced authority to address market power.

A separate bill being transmitted today would change Federal tax law to address certain tax-exempt bonds, nuclear decommissioning costs, class life for distributed power facilities, and to provide a temporary tax credit for combined heat and power facilities.

We urge the prompt enactment of CECA to provide lower prices, a cleaner environment,

and increased technical innovation and efficiency.

The Omnibus Budget Reconciliation Act requires that all revenue and direct spending legislation meet a pay-as-you-go (PAYGO) requirement. That is, no such bill should result in net budget costs: and if it does, it could contribute to a sequester if it is not fully offset. This proposal affects direct spending and receipts; therefore, it is subject to the PAYGO requirement. The net PAYGO effect of this bill is currently estimated to be a net cost of \$60 million in FY 2000 and a net savings of \$274 million from FY 2000 to FY 2004.

The proposals to provide an investment tax credit for combined heat and power and to deny tax-exempt status for new electric utility bonds except for distribution related expenses, are included in the President's FY 2000 Budget. The Budget contains proposals for mandatory spending reductions and increases in receipts that are sufficient to finance these proposals.

This estimate is preliminary and subject to change.

The pay-as-you-go effect of this draft bill is:

FISCAL YEAR (In millions of dollars)						
	1999	2000	2001	2002	2003	2004
Tax Provisions:						
Revenue Effect ¹	-1	-60	-88	-90	-22	34
Renewable Portfolio Standards:						
Offsetting receipts		-5	-9	-9	-9	-9
Outlays		5	9	9	9	9
Net Cost						
Public Benefits Fund and Electricity Reliability Organization:						
Offsetting receipts		-3,005	-3,005	-3,005	-3,005	-3,005
Outlays		2,505	3,005	3,005	3,005	3,005
Net Cost			-500			
Total Net Cost	1	60	-412	90	22	-34

¹ For tax provisions, a "+" is a revenue gain; a "-" is a revenue loss. These proposals have been fully offset in the President's budget.

The Office of Management and Budget advises that there is no objection to the presentation of this legislation to the Congress and that its enactment would be in accord with the program of the President.

If you require any additional information, please call me or have a member of your staff contact Mr. John C. Angell, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Yours sincerely,

BILL RICHARDSON.

SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE ELECTRICITY COMPETITION ACT

TITLE I. RETAIL ELECTRIC SERVICE

Section 101. Retail competition

This provision would amend the Public Utility Regulatory Policies Act of 1978 (PURPA) to require each distribution utility to permit all of its retail customers to purchase power from the supplier of their choice by January 1, 2003, but would permit a State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or a non-regulated utility to opt out if it finds, on the basis of a public proceeding, that consumers of the utility would be served better by the current monopoly system or an alternative retail competition plan.

The section also would enunciate a Federal policy that utilities should be able to recover prudently incurred, legitimate, and

verifiable retail stranded costs that cannot be mitigated reasonably, but States and non-regulated utilities would continue to determine whether to provide for retail stranded costs recovery. If States and non-regulated utilities are considering implementation of retail competition, they would also be required to consider providing assistance for electric utility workers who may become or have become unemployed as a result of the implementation of retail competition. If a State or non-regulated utility decides to impose a stranded cost charge, it would be required to consider reducing that charge if the charge results from the use of on-site efficient or renewable generation. This section does not retrocede to States authority over Federal enclaves.

Section 102. Authority to impose reciprocity requirements

This section would amend PURPA to permit a State that has filed a notice indicating it is implementing retail competition to prohibit a distribution utility that is not under the ratemaking authority of the State and that has not implemented retail competition from directly or indirectly selling electricity to the consumers covered by the State's notice. This section also would permit a non-regulated utility that has filed a notice of retail competition to prohibit any other utility that has not implemented retail competition from directly or indirectly selling electricity to the consumers covered by the non-regulated utility's notice.

Section 103. Aggregation for purchase of retail electric energy

This section would amend PURPA to ensure that electricity customers and entities acting on their behalf, subject to legitimate and non-discriminatory State requirements, would be allowed to acquire retail electric energy on an aggregate basis if they are served by one or more distribution utilities for which a notice of retail competition has been filed.

TITLE II. CONSUMER PROTECTION

Section 201. Consumer information

This section would amend PURPA to permit the Secretary of Energy to require all suppliers of electricity to disclose information on price, terms, and conditions; the type of energy resource used to generate the electric energy; and the environmental attributes of the generation, including air emissions characteristics. This requirement would be enforceable by the Federal Trade Commission and by individual States.

Section 202. Access to electric service for low-income consumers

This section would amend PURPA to require a State regulatory authority or non-regulated distribution utility that files a notice of retail competition to consider assuring that its low-income residential consumers have service comparable to its other residential consumers and that all retail electric suppliers in the State share equitably any costs necessary to provide such service.

Section 203. Unfair trade practices

This section would amend the Federal Trade Commission Act to establish slamming and cramming in supplying electricity as unfair trade practices punishable by the Federal Trade Commission (FTC). Under this section, a person may not submit or change, in violation of procedures established by the FTC, a retail electric customer's selection of a retail electric supplier. Also, a person may not charge a retail electric customer for a particular service, except in accordance with procedures established by the FTC.

Section 204. Residential electricity consumer database

This section would amend PURPA to authorize the Secretary of Energy to establish a database containing information to help residential electric consumers compare the offers of various retail electric suppliers.

Section 205. Model retail supplier code

This section would amend PURPA to authorize the Secretary of Energy to develop for State use a model code for the regulation of retail electricity suppliers for the protection of electric consumers.

Section 206. Model electric utility worker code

This section would amend PURPA to authorize the Secretary of Energy to develop for State use a model code setting standards for electric utility workers to ensure that electric utilities are operated safely and reliably.

TITLE III—FACILITATING STATE AND REGIONAL REGULATION

Section 301. Clarification of State and Federal authority over retail transmission services

Subsection (a) would clarify that the Federal Power Act (FPA) does not prevent States and nonregulated distribution utilities from ordering retail competition or imposing conditions, such as a fee, on the receipt of electric energy by an ultimate customer within the State. This section also would clarify the Federal Energy Regulatory Commission's (FERC) authority over unbundled retail transmission.

Subsection (b) would reinforce FERC's authority to require public utilities to provide open access transmission services and permit recovery of stranded costs. This section also would provide retroactive effect to Commission Order No. 888 and clarify FERC's authority to order retail transmission service to complete an authorized retail sale.

Subsection (c) would extend FERC's jurisdiction over transmission services to municipal and other publicly-owned utilities and cooperatives.

Subsection (d) would give the Secretary of Agriculture intervention rights in FERC rulemakings that directly affect a cooperative with loans made or guaranteed under the Rural Electrification Act of 1936.

Section 302. Interstate compacts on regional transmission planning

This section would amend the FPA to permit FERC to approve interstate compacts that establish regional transmission planning agencies if the agencies meet certain criteria relating to their governance.

Section 303. Backup authority to impose a charge on an ultimate consumer's receipt of electric energy

This section would amend the FPA to reinforce FERC's authority to provide a back-up for the recovery of retail stranded costs if a State or a non-regulated utility has filed a retail competition notice and concludes that such charges are appropriate but lacks authority to impose a charge on the consumer's receipt of electric energy.

Section 304. Authority to establish and require independent regional system operation

This section would amend section 202 of the FPA by permitting FERC to establish an entity for independent operation, planning, and control of interconnected transmission facilities and to require a utility to relinquish control over operation of its transmission facilities to an independent regional system operator.

TITLE IV—PUBLIC BENEFITS

Section 401. Public benefits fund

This section would amend PURPA by establishing a Public Benefits Fund adminis-

tered by a Joint Board that would disburse matching funds to participating States and tribal governments to carry out programs that support affordable electricity service to low-income customers; implement energy conservation and energy efficiency measures and energy management practices; provide consumer education; and develop emerging electricity generation technologies. Funds for the Federal share would be collected from generators, which, as a condition of interconnection with facilities of any transmitting utility, would pay to the transmitting utility a charge, not to exceed one mill per kilowatt-hour. The transmitting utility then would pay the collected amounts to a fiscal agent for the Fund. States and tribal governments would have the flexibility to decide whether to seek funds and how to allocate funds among public purposes. In addition, a rural safety net would be created if the Secretary of Energy determines, in consultation with the Secretary of Agriculture, that significant adverse economic effects on rural areas have occurred or will occur as a result of electric restructuring.

Section 402. Federal renewable portfolio standard

This section would amend PURPA to establish a Federal Renewable Portfolio Standard (RPS) to guarantee that a minimum level of renewable generation is developed in the United States. The RPS would require electricity sellers to have renewable credits based on a percentage of their electricity sales. The seller would receive credits by generating power from non-hydroelectric renewable technologies, such as wind, solar, biomass, or geothermal generation; purchasing credits from renewable generators; or a combination of these, but would receive twice the number of credits if the power was generated on Indian lands. The RPS requirement for 2000-2004 would be set at the current ratio of RPS-eligible generation to retail electricity sales. Between 2005-2009, the Secretary of Energy would determine the required annual percentage, which would be greater than the baseline percentage but less than 7.5%. In 2010-2015, the percentage would be 7.5%. The RPS credits would be subject to a cost cap of 1.5 cents per kilowatt hour, adjusted for inflation.

Section 403. Net metering

This section would amend PURPA by requiring all retail electric suppliers to make available to consumers "net metering service," through which a consumer would offset purchases of electric energy from the supplier with electric energy generated by the consumer at a small on-site renewable generating facility and delivered to the distribution system. This section also would clarify that States are not preempted under Federal law from requiring a retail electric supplier to make available net metering service.

Section 404. Reform of section 210 of PURPA

This section would repeal prospectively the "must buy" provision of section 210 of PURPA. Existing contracts would be preserved, and the other provisions of section 210 would continue to apply.

Section 405. Interconnections for certain facilities

This section would amend PURPA to require a distribution utility to allow a combined heat and power or a distributed power facility to interconnect with it if the facility is located in the distribution utility's service territory and complies with rules issued by the Secretary of Energy and related safety and power quality standards.

Section 406. Rural and remote communities electrification grants

This section would amend the Rural Electrification Act of 1936 to authorize the Secretary of Agriculture, in consultation with the Secretary of Energy, to provide grants for the purpose of increasing energy efficiency, lowering or stabilizing electric rates to end users, or providing or modernizing electric facilities for rural and remote communities and Indian tribes.

Section 407. Indian tribe assistance

This section would amend the Energy Policy Act of 1992 to require the Secretary of Energy to establish a grant and technical assistance program to assist Indian tribes to meet their electricity needs. Among other things, the program could provide assistance in planning and constructing electricity generation, transmission, and distribution facilities.

Section 408. Office of Indian Energy Policy and Programs

This section would authorize the Secretary of Energy to establish an office within the Department of Energy to coordinate and implement energy, energy management, and energy conservation programs for Indian tribes.

Section 409. Southeast Alaska electrical power

This section would authorize appropriations as necessary to ensure the availability of adequate electric power to the greater Ketchikan area in southeast Alaska, including an intertie.

TITLE V—REGULATION OF MERGERS AND CORPORATE STRUCTURE

Section 501. Reform of holding company regulation under PUHCA

This section would repeal the Public Utility Holding Company Act of 1935 (PUHCA). In addition, FERC and State regulatory commissions would be given greater access to the books and records of holding companies and affiliates.

Section 502. Electric company mergers

This section would amend the FPA by conferring on FERC jurisdiction over the merger or consolidation of electric utility holding companies and generation-only companies. This section also would streamline FERC's review of mergers. In addition, this section would require that FERC consider the effect a merger could have on wholesale and retail electric generation markets.

Section 503. Remedial measures for market power

This section would amend the FPA to authorize FERC to remedy market power in wholesale markets. This section also would authorize FERC, upon petition from a State, to remedy market power in retail markets.

TITLE VI—ELECTRICITY RELIABILITY

Section 601. Electric reliability organization and oversight

This section would amend the FPA to give FERC authority to approve and oversee an Electric Reliability Organization to prescribe and enforce mandatory reliability standards. Membership in the organization would be open to all entities that use the bulk-power system and would be required for all entities critical to system reliability. The Electric Reliability Organization would be authorized to delegate authority to one or more Affiliated Regional Reliability Entities, which could implement and enforce the standards within a region.

Section 602. Electricity outage investigation

This section would amend the Department of Energy Organization Act to establish in

the Department of Energy a board to investigate and determine the causes of a major bulk-power system failure in the United States.

Section 603. Additional transmission capacity

This section would amend PURPA to give the Secretary of Energy authority to call and chair a meeting of representatives of States in a region in order to discuss provision of additional transmission capacity and related concerns.

TITLE VII—ENVIRONMENTAL PROTECTION

Section 701. Nitrogen oxides cap and trade program

This section would clarify Environmental Protection Agency authority to require a cost-effective interstate trading system for nitrogen oxide pollutant reductions addressing the regional transport contributions needed to attain and maintain the National Ambient Air Quality Standards for ozone.

TITLE VIII—FEDERAL POWER SYSTEMS

Subtitle A—Tennessee Valley Authority (TVA)

Section 801. Definition

Section 802. Application of Federal Power Act

This section would subject TVA to relevant provisions of the FPA for purposes of TVA's transmission system, but would provide that any determination of the Commission would be subject to any other laws applicable to TVA, including the requirement that TVA recover its costs.

Section 803. Antitrust coverage

This section would subject TVA to the antitrust laws effective January 1, 2003, except that TVA would not be liable for civil damages or attorney's fees.

Section 804. TVA power sales

This section would permit TVA, effective January 1, 2003, to sell electric power at wholesale to any person. With regard to sales at retail, this section would permit TVA to sell (1) to existing customers or (2) to customers of an existing wholesale customer of TVA, if the distributor has firm power purchases from TVA of 50 percent or less of its total retail sales, or if the distributor agrees that TVA can sell power to the customer.

Section 805. Renegotiation of long-term power contracts

This section would require TVA to renegotiate its long-term power contracts with respect to the remaining term; the length of the termination notice; the amount of power a distributor may purchase from a supplier other than TVA beginning January 1, 2003, and access to the TVA transmission system for that power; and stranded cost recovery. This section would require that, if the parties are unable to reach agreement within the one year, they would submit the issues in dispute to the Federal Regulatory Commission for final resolution.

Section 806. Stranded cost recovery

This section would provide the Commission with the authority to provide TVA with stranded cost recovery

Section 807. Conforming amendments

This section would make conforming amendments to the Tennessee Valley Authority Act.

Subtitle B—Bonneville Power Administration

Section 811. Definitions

Section 812. Application of Federal Power Act

This section would subject Bonneville to relevant provisions of the FPA for purposes

of Bonneville's transmission system, but would provide that any determination of the Commission would be subject to a list of conditions, including a requirement that the rates and charges are sufficient to recover existing and future Federal investment in the Bonneville Transmission System.

Section 813. Surcharge on transmission rates to recover otherwise nonrecoverable costs

This section would require the Commission to establish a mechanism that would enable the Administrator to place a surcharge on rates or charges for transmission services over the Bonneville Transmission System under limited circumstances in order to recover power costs unable to be recovered through power revenues in time to meet Bonneville's cost recovery requirements.

Section 814. Complaints

This section would clarify that the PMAs may file complaints with the Commission.

Section 815. Review of Commission orders

This section would clarify that the PMAs may file a rehearing request or may appeal a Commission order.

Section 816. Conforming amendments

This section would make conforming amendments to the FPA, the Federal Columbia River Transmission System Act, the Pacific Northwest Regional Preference Act, the Pacific Northwest Electric Power Planning and Conservation Act, and the Bonneville Project Act.

Subtitle C—Western Area Power Administration (WAPA) and Southwestern Power Administration (SWPA)

Section 821. Definitions

Section 822. Application of Federal Power Act

This section would subject SWPA and WAPA to relevant provisions of the FPA for purposes of the transmission systems of SWPA and WAPA, but would provide that any determination of the Commission would be subject to a list of conditions, including a requirement that the rates and charges are sufficient to recover existing and future Federal investment in the transmission systems.

Section 823. Surcharge on transmission rates to recover otherwise nonrecoverable costs

This section would require the Commission to establish a mechanism that would enable the Administrator to place a surcharge on rates or charges for transmission services over the SWPA or WAPA Transmission System when necessary in order to recover power costs unable to be recovered through power revenues in time to meet SWPA's or WAPA's cost recovery requirements.

Section 824. Conforming amendments

This section would make conforming amendments to the Department of Energy Organization Act and the Reclamation Reform Act of 1982.

TITLE IX—OTHER PROVISIONS

Section 901. Treatment of nuclear decommissioning costs in bankruptcy

This section would amend the Bankruptcy Act to provide that decommissioning costs be a nondischargeable priority claim.

Section 902. Energy Information Administration study of impacts of competition in electricity markets

This section would amend the Department of Energy Organization Act to direct the Energy Information Administration to collect and publish information on the impacts of wholesale and retail competition.

Section 903. Antitrust savings clause

This section would provide that nothing in this Act would supersede the operation of the antitrust laws.

Section 904. Elimination of antitrust review by the Nuclear Regulatory Commission

This section would eliminate Nuclear Regulatory Commission antitrust review of an application for a license to construct or operate a commercial utilization or production facility.

Section 905. Environmental law savings clause

This section would provide that nothing in this Act would alter environmental requirements of Federal or State law.

Section 906. Generating plant efficiency study

This section would amend the Department of Energy Organization Act to require the Secretary of Energy to issue a report on the efficiency of new and existing electric generating facilities before and after electric competition is in effect.

Section 907. Conforming amendments

TITLE X—AMENDMENTS TO INTERNAL REVENUE CODE

Section 1001. Treatment of bonds issued to finance output facilities

This section would amend the Internal Revenue Code to clarify the status of tax-exempt bonds used to finance utility facilities owned by municipalities. The section would grandfather current tax treatment for bonds that exist already, continue to permit public utilities to issue tax-exempt bonds in the future for new electricity distribution facilities, and eliminate their ability in the future to issue tax-exempt bonds for new transmission and generation facilities.

Section 1002. Nuclear decommissioning costs

This section would amend the Internal Revenue Code to clarify that an investor-owned utility could take a tax deduction for the amount paid into a qualified nuclear decommissioning fund for any taxable year, notwithstanding the elimination of "cost of service" ratemaking.

Section 1003. Depreciation treatment of distributed power property

This section would amend the Internal Revenue Code of 1986 to clarify that distributed power facilities have a tax life of 15 years.

Section 1004. Tax credit for combined heat and power system property

This section would amend the Internal Revenue Code to provide an 8 percent investment credit for qualified combined heat and power (CHP) systems placed in service in calendar years 2000 through 2002. The measure would apply to large CHP systems that have a total energy efficiency exceeding 70 percent and to smaller systems that have a total energy efficiency exceeding 60 percent.

• Mr. BINGAMAN. Mr. President, at the request of the administration, I am today joining with my good friend Senator MURKOWSKI, the Chairman of the Energy and Natural Resources Committee, to introduce the president's electricity restructuring legislation.

The administration has presented Congress a fully comprehensive set of legislative proposals. For the first time we have detailed provisions on every major issue affecting the electricity industry as it moves into the new world of competition. Significantly, the president's comprehensive proposals include a framework for the transition of the Bonneville Power Administration and the Tennessee Valley Authority into the new competitive arena.

In considering the administration's proposals, Congress should look to areas that complement the states' ongoing restructuring activities, while leaving the key decisions on retail competition to state and local authorities. Let me mention three areas for federal concern. First, I believe Congress should remove federal impediments to states that chose to implement retail competition. Second, we should take steps to improve the regulation of interstate transmission and assure the continued security and reliability of the nation's grid. And third, Congress should ensure that fair competition can operate at both the wholesale and retail levels. These are the issues that only Congress can address.

Mr. President, Congress should not dwell any longer on whether retail competition is good or bad, or whether or not it will benefit all consumers—the states are already making these decisions. It should be clear to all senators that retail competition for electric power generation is quickly becoming a reality. Nearly half of the states have now enacted restructuring legislation. Last month, New Mexico enacted restructuring legislation that will soon bring retail competition in electricity to my state.

The consensus is growing on the need for federal legislation focused narrowly on wholesale transactions, interstate transmission, and reliability. Mr. President, this is not a simple question of "de-regulation" versus "re-regulation;" this is about keeping America's high-tension grid system secure, reliable, and economical. The federal role in regulating interstate commerce in electric power is clear. I hope we will move forward soon to resolve, at a minimum, the critical federal issues.

Rather than commenting here on the pros and cons of any particular provision in the president's bill, I will wait until the administration has a fair opportunity to explain the bill to the Energy Committee in a legislative hearing. I know the committee already has a very full plate, but I hope the Chairman will find time to hold a hearing soon on this important topic.

Mr. President, Congress still has time to pass vital federal electricity legislation, but we've got to get the process underway promptly. I hope the administration's proposals will help fuel interest in the Senate. Today America has the world's best electric power system. Let's not wait until serious problems develop to begin making the needed changes in federal regulation. Electricity is too important to the nation to leave critical federal issues unresolved.●

By Mr. MURKOWSKI:

S. 1049. A bill to improve the administration of oil and gas leases on Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

FEDERAL OIL AND GAS LEASE MANAGEMENT IMPROVEMENT ACT OF 1999

By Mr. MURKOWSKI:

S. 1050. A bill to amend the Internal Revenue Code of 1986 to provide incentives for gas and oil producers, and for other purposes; to the Committee on Finance.

ENERGY SECURITY TAX POLICY ACT OF 1999

Mr. MURKOWSKI. Mr. President, the production of oil and gas in the United States is fast becoming a thing of the past. I am introducing two bills today to halt, and if possible, reverse that trend.

The economic consequences of the 1973 oil embargo were severe and long lasting. Whole sectors of our economy underwent significant changes and dislocations. Parts of the United States were plunged into recession which remained for a decade as they adjusted to the fluctuations and insecurity of energy supplies in the 1970's. At the time of the embargo, imports made up 36% of our oil consumption.

Our foreign policy was modified to reflect our growing dependence and protecting oil-producing regions of the world took on a new importance. By the time of the Gulf War of 1990-91, oil imports were roughly 50%.

Today, the United States depends upon foreign sources for some 56% of our supply. This is despite Corporate Average Fuel Efficiency (CAFE) standards for cars which have almost doubled gas mileage. This is despite the creation of the Department of Energy. This is despite the untold billions of dollars which have been invested by U.S. industry in energy-saving equipment and processes in order to remain competitive in a world economy.

If no changes are made in federal policy to protect our domestic oil and gas industry—the "pilot light" of our nation's economy and security upon which all productive enterprise depends—our future indeed may be bleak. The Department of Energy predicts 68% dependency on foreign oil by the year 2010. This is just shy of a doubling of our oil imports since the embargo of 1973.

In two recent hearings the Senate Energy & Natural Resources Committee examined the state of the domestic oil and gas industries and their future. What we learned has been the impetus for my introduction of these bills today.

During the past 18 months, 136,000 U.S. oil wells and 57,000 gas wells have been shut in. 50,000 men and women throughout the United States have lost their jobs in these industries—15% of all employees. With operating oil rigs at an all-time low and new investment in the U.S. drying up, the future for domestic production of oil and gas is grim.

While the consumption of natural gas is favored by the Administration as a

means to reduce emissions, unless changes are made now in federal policy to make production and delivery of natural gas easier, the projected 50% increase in the need for natural gas by the year 2010 will not be met without severe price shocks for American citizens.

The price of oil today is high enough for investment in the U.S. by those who will or can still invest in our domestic oil and gas economy. However, the fact is that the fundamentals for investment in America are not good. Access to prospective areas is severely restricted, environmental costs are extremely high and production rates from U.S. wells are liable to be quite low, in comparison to other areas in the world.

The U.S. is a mature and high cost oil producing region of the world. In response to a changing world oil market, other producing countries are undertaking changes in their government policies to attract and retain economic investment in what they properly consider to be an important national industry.

For example, the United Kingdom has undertaken a significant regulatory reform effort to speed, simplify and provide certainty to investments in their energy industry. They are actively reviewing their tax and royalty systems to adjust them to the new realities of the world energy markets. Colombia, likewise, is undertaking major reductions in royalties to attract and retain investment. These nations and others have determined that they must compete with the rest of the world for investment capital, and are thus moving to make their nations more attractive to such investment. The U.S. lags far behind.

The first of the bills I am introducing is identical to a measure being introduced in the U.S. House of Representatives by Congresswoman BARBARA CUBIN, Chairman of the Subcommittee on Energy and Mineral Resources. It makes significant changes in the oil and gas leasing policies of the United States, by simplifying procedures and granting more certainty for those who choose to invest in our domestic energy business.

This legislation grants States the option of assuming federal regulation of oil and gas leases within their borders, after a federal decision to lease is made. States already perform identical functions on their lands, and this would standardize regulatory functions within a State's borders. The States are closer than the federal government to oil and gas leasing activities within their borders, and are best positioned to make timely and responsible regulatory decisions. In return for opting to assume the specified federal responsibilities for these activities, the States would receive payment of up to 50% of the costs currently assessed

them by the federal government for these functions. Federal ownership of the lands would continue.

An important part of this legislation clarifies that the federal government can no longer charge States via the existing "net receipts sharing" program for the costs of programmatic planning activities on federal lands unrelated to mineral leasing activities. This would stop creative legal interpretations by the Department of Interior like that which charged Utah for the government's secret planning which resulted in the creation of an enormous National Monument in that State. This type of creative accounting undermines the respect of the citizenry in their governmental institutions, and with this bill, we will plug this leak in the public trust.

The legislation also assists States by dropping the requirement that their share of mineral leasing on federal lands within their borders be reduced by the government's costs of administering mineral leasing if a State opts to assume the federal government's responsibility for regulation of oil and gas activities.

In order to speed development of secure sources of domestic oil and gas by making federal practices more competitive with the rest of the world, I have included in the bill certain provisions which are intended to correct federal practices which are hastening the flight of oil and gas development capital to foreign shores.

One recurring criticism from those who would like to invest in America's domestic energy development is the uncertainty they encounter when they do business with their own federal government. In order to make investment decisions, they must have some certainty about when they might reasonably be expected to be able to actually take possession of, and invest capital in, a federal lease. Moreover, the government is increasingly charging potential lessees for governmental activities before they have any reasonable expectation of being granted a lease. This is akin to charging customers just to stand in line to buy a lottery ticket for a drawing which may never be held. This is absurd, and is a clear signal to potential investors that the U.S. cares little about whether the investment is made here or abroad. This legislation will reverse that signal and provide the certainty that investors need.

Additionally, my legislation would establish reasonable and responsible time frames for the government to respond to requests for permits. If legally-required analyses could not be undertaken by the government within a reasonable time, the applicant could be offered the opportunity to contract for such analyses by an independent party for the government's use. My bill would allow the applicant to receive a credit against royalties due from even-

tual production in the area for such costs, in recognition of the fact that the more rapidly lands are leased and put into oil or gas production, the more revenues the government will receive and the quicker it will receive it.

My legislation also sets fair but rigid performance deadlines for the completion of federal lease decision-making. One of the most frequent concerns I hear from small companies throughout the country in the oil and gas producing business is the snail-like pace of federal decision-making. Customers of government services deserve a "yes" or "no", instead of the endless series of "maybes" to which they have become accustomed. They deserve no less, and I seek to correct that deficiency before *all* oil and gas investment flees our shores.

Coordination among federal land management agencies over leasing policies is also long overdue. The bill requires the Secretaries of the Interior and Agriculture to report to Congress with recommendations explaining the most efficient means of eliminating duplication of effort and inconsistent policy between the Bureau of Land Management and the Forest Service with respect to the treatment of oil and gas leases.

The U.S. government and the public deserve to have the best knowledge possible about our domestic supplies of energy. The legislation I am introducing today initiates a modern, science-based energy inventory process to be undertaken by the Secretary of Interior and the Director of the U.S. Geological Survey. Technology for determining oil and gas availability has revolutionized the private sector; it is time for this quantum leap information to be used by the government.

I am particularly happy to include as Title 4 of the bill a provision that Senator DON NICKLES recently introduced as S. 924, concerning federal royalty certainty. This would put an end to the seemingly intractable problem that has sprung up between lessees and the Department of Interior over the issue of where oil is to be valued for royalty purposes. While other nations around the world are taking steps to become more competitive for energy investments by changing laws to encourage investment and provide certainty to possible investors, this recent backdoor royalty increase by the Administration has sent a strong signal to domestic producers that they are no longer welcome here. Title 4 merely clarifies what Congress has been saying all along—that oil should be valued for royalty purposes at or near the lease. This clarification is absolutely essential if consumers are to receive the 30 trillion cubic feet of gas the Administration says they will demand in a decade at a cost they can afford.

The final title of the legislation will serve as a strong signal to our domestic industry that we value the jobs

they provide for our neighbors and the investment they make right here at home. It recognizes that when world oil prices make investments in American energy production uncompetitive with foreign investments, the U.S. will adjust our take from the current direct royalty to a system which promotes jobs and investment in down times and increases royalty and U.S. production later. Specifically, it calls for a 20% credit against royalties due the federal government against capital expenditures during times of lowered oil and gas prices. If a landlord discovered that his rental units were vacant because they were overpriced compared to the competition, he would drop the price to attract renters. The federal government should do the same.

The legislation would also adjust the definition of what constitutes a "marginal" oil well, and allow for suspensions of leases at the lessee's option when oil prices dip precipitously.

This bill is a comprehensive attempt to bring some of our mineral leasing laws and regulations up-to-date with the realities of today's world energy markets. Our domestic industry is dying on the vine because of a combination of governmental actions and inactions, complex regulation and outdated governmental approaches to this important part of our national economy. We need to take steps to make sure that the "pilot light" of our economy does not go out, and it is my belief that this legislation will go a long way to ensuring its continuing contributions to our nation's strength.

Mr. President, the second measure that I am introducing today will redress some of the unfair tax penalties that hinder the continued development and modernization of a domestic oil and gas industry. In particular the legislation focuses on aspects of the alternative minimum tax (AMT) that have a perverse effect on the industry, especially when energy prices are low.

Mr. President, in adopting the AMT in 1986, Congress stated that its purpose was to "serve one overriding objective: to ensure that no taxpayer with substantial economic income can avoid significant tax liability by using exclusions, deductions and credits." Yet the unintended consequence of the AMT is that companies with high fixed costs, such as the oil and gas industry, can face higher effective AMT tax rates when the price of oil is low than when the price is high. In other words, when oil and gas companies are struggling to cope with low world prices, the AMT serves to impose a tax penalty simply because prices are low.

Let me give you an example of the perverse effect of the AMT. If the price of oil is \$10 a barrel and an oil and gas company sells 100,000 barrels of oil, the company's revenues would be \$1 million. If its production costs were \$500,000, its gross profits would be

\$500,000. If the company took advantage of percentage depletion and other oil and gas incentives, it could reduce its taxable income to \$100,000 and owe \$35,000 in taxes. However, because the AMT takes back many of these oil and gas incentives, the same company would be subject to a \$90,000 AMT. That is a 90 percent tax rate.

By contrast, assuming the same fixed costs and incentives, if the price of oil was \$20 a barrel and the company had \$1.1 million in taxable income, its regular tax rate would only be 35 percent and its AMT liability would be only 26.4 percent. Mr. President, that is not the way the AMT was designed to work.

My bill tackles this problem head-on. It eliminates the AMT preferences for intangible drilling costs, percentage depletion, and the depreciation adjustment for oil and gas assets. In addition, it eliminates the impact of intangible drilling costs, depletion and depreciation on oil and gas assets from the adjusted current earnings adjustment. Finally, the proposal allows the enhanced oil recovery credit and the Section 29 credit to be used to offset the AMT.

In addition to trying to resolve the AMT problems that face the industry, I have adopted a portion of a bill introduced by Senator Kay Bailey Hutchison that attempts to maintain viable independent producers and ensure that marginal wells stay in operation. Marginal wells are those that produce less than 15 barrels a day. In reality they produce on average about 2.2 barrels of oil a day. While individually these wells may not seem like important components of our domestic energy supply, together they produce as much oil as the United States imports from Saudi Arabia. To maintain these marginal wells, the legislation includes a marginal well tax credit of \$3.00 per barrel in order to prolong marginal domestic oil and gas well production.

Mr. President, in an effort to stimulate enhanced recovery of oil and thereby increase U.S. production, my legislation enlarges the definition of enhanced oil recovery by including horizontal drilling in areas of Alaska where the only feasible method of recovering some oil is to use such methods. In Alaska, it is just not economically feasible to search for oil by moving drilling platforms from area to area. Instead, the oil companies attempt to locate oil by using a single drilling platform and employing horizontal drilling techniques to search for oil. My legislation recognizes these economic realities and encourages further development of horizontal drilling techniques so that we can recover oil more feasibly.

Finally, Mr. President, this second measure addresses a problem that has recently arisen with natural gas gathering lines. These lines are used to

transport natural gas from the wellhead to a central processing facility for processing before it can be transported via trunk lines to an end user such as a distribution facility. The Federal Energy Regulatory Commission (FERC) exempts gas processor gather lines from FERC jurisdiction because they are classified as gas gathering equipment that is part of the production facility, not pipeline transportation under FERC rules.

IRS has taken the position that these lines should be depreciated over a 15 year period if they are owned and operated by an entity that does not produce oil or gas transported in the line. However, if gas transported in the line is owned by the producer, the line can be depreciated over 7 years.

Mr. President, this rule does not make sense. The depreciable life of an asset should depend on the use of the asset and not who owns the asset. For that reason, my legislation clarifies that these gathering lines are depreciable over 7 years no matter who the owner of the pipeline is.

Mr. President, there are many other tax changes that have been proposed to assist the oil and gas industry. It is my view that the proposals I have offered will, over the long term, improve the health of the industry in the most cost-effective manner.

I ask unanimous consent that the text of the two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1049

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Oil and Gas Lease Management Improvement Act of 1999".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. No property right.

TITLE I—STATE OPTION TO REGULATE OIL AND GAS LEASE OPERATIONS ON FEDERAL LAND

- Sec. 101. Transfer of authority.
- Sec. 102. Activity following transfer of authority.

TITLE II—USE OF COST SAVINGS FROM STATE REGULATION

- Sec. 201. Compensation for costs.
- Sec. 202. Exclusion of costs of preparing planning documents and analyses.
- Sec. 203. Receipt sharing.

TITLE III—STREAMLINING AND COST REDUCTION

- Sec. 301. Applications.
- Sec. 302. Timely issuance of decisions.
- Sec. 303. Elimination of unwarranted denials and stays.
- Sec. 304. Reports.
- Sec. 305. Scientific inventory of oil and gas reserves.

TITLE IV—FEDERAL ROYALTY CERTAINTY

- Sec. 401. Definitions.
 Sec. 402. Amendment of Outer Continental Shelf Lands Act.
 Sec. 403. Amendment of Mineral Leasing Act.
 Sec. 404. Indian land.

TITLE V—ROYALTY REINVESTMENT IN AMERICA

- Sec. 501. Royalty incentive program.
 Sec. 502. Marginal well production incentives.
 Sec. 503. Suspension of production on oil and gas operations.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—
 (1) State governments have a long and successful history of regulation of operations to explore for and produce oil and gas; the special role of the States was recognized by Congress in 1935 through its ratification under the Constitution of the Interstate Compact to Conserve Oil and Gas;

(2) under the guidance of the Interstate Oil and Gas Compact Commission, States have established effective regulation of the oil and natural gas industry and subject their programs to periodic peer review through the Commission;

(3) it is significantly less expensive for State governments than for the Federal Government to regulate oil and gas lease operations on Federal land;

(4) significant cost savings could be achieved, with no reduction in environmental protection or in the conservation of oil and gas resources, by having the Federal Government defer to State regulation of oil and gas lease operations on Federal land;

(5) State governments carry out regulatory oversight on Federal, State, and private land; oil and gas companies operating on Federal land are burdened with the additional cost and time of duplicative oversight by both Federal and State conservation authorities; additional cost savings could be achieved within the private sector by having the Secretary defer to State regulation;

(6) the Federal Government is presently cast in opposing roles as a mineral owner and regulator; State regulation of oil and gas operations on Federal land would eliminate this conflict of interest;

(7) it remains the responsibility of the Secretary of the Interior to carry out the Federal policy set forth in the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) to foster and encourage private sector enterprise in the development of economically sound and stable domestic mineral industries, and the orderly and economic development of domestic mineral resources and reserves, including oil and gas resources; and

(8) resource management analyses and surveys conducted under the conservation laws of the United States benefit the public at large and are an expense properly borne by the Federal Government.

(b) PURPOSES.—The purposes of this Act are—

(1) to transfer from the Secretary to each State in which Federal land is present authority to regulate oil and gas operations on leased tracts and related operations as fully as if the operations were occurring on privately owned land;

(2) to share the costs saved through more efficient State enforcement among State governments and the Federal treasury;

(3) to prevent the imposition of unwarranted delays and recoupments of Federal administrative costs on Federal oil and gas lessees;

(4) to effect no change in the administration of Indian land; and

(5) to ensure that funds deducted from the States' net receipt share are directly tied to administrative costs related to mineral leasing on Federal land.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICATION FOR A PERMIT TO DRILL.—The term "application for a permit to drill" means a drilling plan including design, mechanical, and engineering aspects for drilling a well.

(2) FEDERAL LAND.—

(A) IN GENERAL.—The term "Federal land" means all land and interests in land owned by the United States that are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(B) EXCLUSION.—The term "Federal land" does not include—

(i) Indian land (as defined in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702)); or

(ii) submerged land on the outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)).

(3) OIL AND GAS CONSERVATION AUTHORITY.—The term "oil and gas conservation authority" means the agency or agencies in each State responsible for regulating for conservation purposes operations to explore for and produce oil and natural gas.

(4) PROJECT.—The term "project" means an activity by a lessee, an operator, or an operating rights owner to explore for, develop, produce, or transport oil or gas resources.

(5) SECRETARY.—The term "Secretary" means—

(A) the Secretary of the Interior, with respect to land under the administrative jurisdiction of the Department of the Interior; and

(B) the Secretary of Agriculture, with respect to land under the administrative jurisdiction of the Department of Agriculture.

(6) SURFACE USE PLAN OF OPERATIONS.—The term "surface use plan of operations" means a plan for surface use, disturbance, and reclamation.

SEC. 4. NO PROPERTY RIGHT.

Nothing in this Act gives a State a property right or interest in any Federal lease or land.

TITLE I—STATE OPTION TO REGULATE OIL AND GAS LEASE OPERATIONS ON FEDERAL LAND

SEC. 101. TRANSFER OF AUTHORITY.

(a) NOTIFICATION.—Not before the date that is 180 days after the date of enactment of this Act, a State may notify the Secretary of its intent to accept authority for regulation of operations, as described in subparagraphs (A) through (K) of subsection (b)(2), under oil and gas leases on Federal land within the State.

(b) TRANSFER OF AUTHORITY.—

(1) IN GENERAL.—Effective 180 days after the Secretary receives the State's notice, authority for the regulation of oil and gas leasing operations is transferred from the Secretary to the State.

(2) AUTHORITY INCLUDED.—The authority transferred under paragraph (1) includes—

(A) processing and approving applications for permits to drill, subject to surface use agreements and other terms and conditions determined by the Secretary;

(B) production operations;

(C) well testing;

(D) well completion;

(E) well spacing;

(F) communization;

(G) conversion of a producing well to a water well;

(H) well abandonment procedures;

(I) inspections;

(J) enforcement activities; and

(K) site security.

(c) RETAINED AUTHORITY.—The Secretary shall—

(1) retain authority over the issuance of leases and the approval of surface use plans of operations and project-level environmental analyses; and

(2) spend appropriated funds to ensure that timely decisions are made respecting oil and gas leasing, taking into consideration multiple uses of Federal land, socioeconomic and environmental impacts, and the results of consultations with State and local government officials.

SEC. 102. ACTIVITY FOLLOWING TRANSFER OF AUTHORITY.

(a) FEDERAL AGENCIES.—Following the transfer of authority, no Federal agency shall exercise the authority formerly held by the Secretary as to oil and gas lease operations and related operations on Federal land.

(b) STATE AUTHORITY.—

(1) IN GENERAL.—Following the transfer of authority, each State shall enforce its own oil and gas conservation laws and requirements pertaining to transferred oil and gas lease operations and related operations with due regard to the national interest in the expedited, environmentally sound development of oil and gas resources in a manner consistent with oil and gas conservation principles.

(2) APPEALS.—Following a transfer of authority under section 101, an appeal of any decision made by a State oil and gas conservation authority shall be made in accordance with State administrative procedures.

(c) PENDING ENFORCEMENT ACTIONS.—The Secretary may continue to enforce any pending actions respecting acts committed before the date on which authority is transferred to a State under section 101 until those proceedings are concluded.

(d) PENDING APPLICATIONS.—

(1) TRANSFER TO STATE.—All applications respecting oil and gas lease operations and related operations on Federal land pending before the Secretary on the date on which authority is transferred under section 101 shall be immediately transferred to the oil and gas conservation authority of the State in which the lease is located.

(2) ACTION BY THE STATE.—The oil and gas conservation authority shall act on the application in accordance with State laws (including regulations) and requirements.

TITLE II—USE OF COST SAVINGS FROM STATE REGULATION

SEC. 201. COMPENSATION FOR COSTS.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall compensate any State for costs incurred to carry out the authorities transferred under section 101.

(b) PAYMENT SCHEDULE.—Payments shall be made not less frequently than every quarter.

(c) COST BREAKDOWN REPORT.—Each State seeking compensation shall report to the Secretary a cost breakdown for the authorities transferred.

(d) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Compensation to a State may not exceed 50 percent of the Secretary's

allocated cost for oil and gas leasing activities under section 35(b) of the Act of February 25, 1920 (commonly known as the "Mineral Leasing Act") (30 U.S.C. 191(b)) for the State for fiscal year 1997.

(2) ADJUSTMENT.—The Secretary shall adjust the maximum level of cost compensation at least once every 2 years to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor, using 1997 as the baseline year.

SEC. 202. EXCLUSION OF COSTS OF PREPARING PLANNING DOCUMENTS AND ANALYSES.

Section 35 of the Act of February 25, 1920 (30 U.S.C. 191(b)) is amended by adding at the end the following:

"(6) The Secretary shall not include, for the purpose of calculating the deduction under paragraph (1), costs of preparing resource management planning documents and analyses for areas in which mineral leasing is excluded or areas in which the primary activity under review is not mineral leasing and development."

SEC. 203. RECEIPT SHARING.

Section 35(b) of the Act of February 25, 1920 (30 U.S.C. 191(b)) is amended by striking "paid to States" and inserting "paid to States (other than States that accept a transfer of authority under section 101 of the Federal Oil and Gas Lease Management Act of 1999)".

TITLE III—STREAMLINING AND COST REDUCTION

SEC. 301. APPLICATIONS.

(a) LIMITATION ON COST RECOVERY.—Notwithstanding sections 304 and 504 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734, 1764) and section 9701 of title 31, United States Code, the Secretary shall not recover the Secretary's costs with respect to applications and other documents relating to oil and gas leases.

(b) COMPLETION OF PLANNING DOCUMENTS AND ANALYSES.—

(1) IN GENERAL.—The Secretary shall complete any resource management planning documents and analyses not later than 90 days after receiving any offer, application, or request for which a planning document or analysis is required to be prepared.

(2) PREPARATION BY APPLICANT OR LESSEE.—If the Secretary is unable to complete the document or analysis within the time prescribed by paragraph (1), the Secretary shall notify the applicant or lessee of the opportunity to prepare the required document or analysis for the agency's review and use in decisionmaking.

(c) REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.—If—

(1) adequate funding to enable the Secretary to timely prepare a project-level analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an oil or gas lease is not appropriated; and

(2) the lessee, operator, or operating rights owner voluntarily pays for the cost of the required analysis, documentation, or related study;

the Secretary shall reimburse the lessee, operator, or operating rights owner for its costs through royalty credits attributable to the lease, unit agreement, or project area.

SEC. 302. TIMELY ISSUANCE OF DECISIONS.

(a) IN GENERAL.—The Secretary shall ensure the timely issuance of Federal agency decisions respecting oil and gas leasing and operations on Federal land.

(b) OFFER TO LEASE.—

(1) DEADLINE.—The Secretary shall accept or reject an offer to lease not later than 90 days after the filing of the offer.

(2) FAILURE TO MEET DEADLINE.—If an offer is not acted upon within that time, the offer shall be deemed to have been accepted.

(c) APPLICATION FOR PERMIT TO DRILL.—

(1) DEADLINE.—The Secretary and a State that has accepted a transfer of authority under section 101 shall approve or disapprove an application for permit to drill not later than 30 days after receiving a complete application.

(2) FAILURE TO MEET DEADLINE.—If the application is not acted on within the time prescribed by paragraph (1), the application shall be deemed to have been approved.

(d) SURFACE USE PLAN OF OPERATIONS.—The Secretary shall approve or disapprove a surface use plan of operations not later than 30 days after receipt of a complete plan.

(e) ADMINISTRATIVE APPEALS.—

(1) DEADLINE.—From the time that a Federal oil and gas lessee or operator files a notice of administrative appeal of a decision or order of an officer or employee of the Department of the Interior or the Forest Service respecting a Federal oil and gas Federal lease, the Secretary shall have 2 years in which to issue a final decision in the appeal.

(2) FAILURE TO MEET DEADLINE.—If no final decision has been issued within the time prescribed by paragraph (1), the appeal shall be deemed to have been granted.

SEC. 303. ELIMINATION OF UNWARRANTED DENIALS AND STAYS.

(a) IN GENERAL.—The Secretary shall ensure that unwarranted denials and stays of lease issuance and unwarranted restrictions on lease operations are eliminated from the administration of oil and gas leasing on Federal land.

(b) LAND DESIGNATED FOR MULTIPLE USE.—

(1) IN GENERAL.—Land designated as available for multiple use under Bureau of Land Management resource management plans and Forest Service leasing analyses shall be available for oil and gas leasing without lease stipulations more stringent than restrictions on surface use and operations imposed under the laws (including regulations) of the State oil and gas conservation authority unless the Secretary includes in the decision approving the management plan or leasing analysis a written explanation why more stringent stipulations are warranted.

(2) APPEAL.—Any decision to require a more stringent stipulation shall be administratively appealable and, following a final agency decision, shall be subject to judicial review.

(c) REJECTION OF OFFER TO LEASE.—

(1) IN GENERAL.—If the Secretary rejects an offer to lease on the ground that the land is unavailable for leasing, the Secretary shall provide a written, detailed explanation of the reasons the land is unavailable for leasing.

(2) PREVIOUS RESOURCE MANAGEMENT DECISION.—If the determination of unavailability is based on a previous resource management decision, the explanation shall include a careful assessment of whether the reasons underlying the previous decision are still persuasive.

(3) SEGREGATION OF AVAILABLE LAND FROM UNAVAILABLE LAND.—The Secretary may not reject an offer to lease land available for leasing on the ground that the offer includes land unavailable for leasing, and the Secretary shall segregate available land from unavailable land, on the offeror's request following notice by the Secretary, before acting on the offer to lease.

(d) DISAPPROVAL OR REQUIRED MODIFICATION OF SURFACE USE PLANS OF OPERATIONS AND APPLICATION FOR PERMIT TO DRILL.—The Secretary shall provide a written, detailed explanation of the reasons for disapproving or requiring modifications of any surface use plan of operations or application for permit to drill.

(e) EFFECTIVENESS OF DECISION.—A decision of the Secretary respecting an oil and gas lease shall be effective pending administrative appeal to the appropriate office within the Department of the Interior or the Department of Agriculture unless that office grants a stay in response to a petition satisfying the criteria for a stay established by section 4.21(b) of title 43, Code of Federal Regulations (or any successor regulation).

SEC. 304. REPORTS.

(a) IN GENERAL.—Not later than March 31, 2000, the Secretaries shall jointly submit to the President of the Senate and the Speaker of the House of Representatives a report explaining the most efficient means of eliminating overlapping jurisdiction, duplication of effort, and inconsistent policymaking and policy implementation as between the Bureau of Land Management and the Forest Service.

(b) RECOMMENDATIONS.—The report shall include recommendations on statutory changes needed to implement the report's conclusions.

SEC. 305. SCIENTIFIC INVENTORY OF OIL AND GAS RESERVES.

(a) IN GENERAL.—Not later than March 31, 2000, the Secretary of the Interior, in consultation with the Director of the United States Geological Survey, shall publish, through notice in the Federal Register, a science-based national inventory of the oil and gas reserves and potential resources underlying Federal land and the outer Continental Shelf.

(b) CONTENTS.—The inventory shall—

(1) indicate what percentage of the oil and gas reserves and resources is currently available for leasing and development; and

(2) specify the percentages of the reserves and resources that are on—

(A) land that is open for leasing as of the date of enactment of this Act that has never been leased;

(B) land that is open for leasing or development subject to no surface occupancy stipulations; and

(C) land that is open for leasing or development subject to other lease stipulations that have significantly impeded or prevented, or are likely to significantly impede or prevent, development; and

(3) indicate the percentage of oil and gas resources that are not available for leasing or are withdrawn from leasing.

(c) PUBLIC COMMENT.—

(1) IN GENERAL.—The Secretary of the Interior shall invite public comment on the inventory to be filed not later than September 30, 2000.

(2) RESOURCE MANAGEMENT DECISIONS.—Specifically, the Secretary of the Interior shall invite public comment on the effect of Federal resource management decisions on past and future oil and gas development.

(d) REPORT.—

(1) IN GENERAL.—Not later than March 31, 2001, the Secretary of the Interior shall submit to the President of the Senate and the Speaker of the House of Representatives a report comprised of the revised inventory and responses to the public comments.

(2) CONTENTS.—The report shall specifically indicate what steps the Secretaries believe are necessary to increase the percentage of land open for development of oil and gas resources.

TITLE IV—FEDERAL ROYALTY CERTAINTY

SEC. 401. DEFINITIONS.

In this title:

(1) **MARKETABLE CONDITION.**—The term “marketable condition” means lease production that is sufficiently free from impurities and otherwise in a condition that the production will be accepted by a purchaser under a sales contract typical for the field or area.

(2) **REASONABLE COMMERCIAL RATE.**—

(A) **IN GENERAL.**—The term “reasonable commercial rate” means—

(i) in the case of an arm’s-length contract, the actual cost incurred by the lessee; or

(ii) in the case of a non-arm’s-length contract—

(I) the rate charged in a contract for similar services in the same area between parties with opposing economic interests; or

(II) if there are no arm’s-length contracts for similar services in the same area, the just and reasonable rate for the transportation service rendered by the lessee or lessee’s affiliate.

(B) **DISPUTES.**—Disputes between the Secretary and a lessee over what constitutes a just and reasonable rate for such service shall be resolved by the Federal Energy Regulatory Commission.

SEC. 402. AMENDMENT OF OUTER CONTINENTAL SHELF LANDS ACT.

Section 8(b)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(b)(3)) is amended by striking the semicolon at the end and adding the following:

“*Provided:* That if the payment is in value or amount, the royalty due in value shall be based on the value of oil or gas production at the lease in marketable condition, and the royalty due in amount shall be based on the royalty share of production at the lease; if the payment in value or amount is calculated from a point away from the lease, the payment shall be adjusted for quality and location differentials, and the lessee shall be allowed reimbursements at a reasonable commercial rate for transportation (including transportation to the point where the production is put in marketable condition), marketing, processing, and other services beyond the lease through the point of sale, other disposition, or delivery;”.

SEC. 403. AMENDMENT OF MINERAL LEASING ACT.

Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)) (commonly known as the “Mineral Leasing Act”), is amended by adding at the end the following:

“(3) **ROYALTY DUE IN VALUE.**—

“(A) **IN GENERAL.**—Royalty due in value shall be based on the value of oil or gas production at the lease in marketable condition, and the royalty due in amount shall be based on the royalty share of production at the lease.

“(B) **CALCULATION OF VALUE OR AMOUNT FROM A POINT AWAY FROM A LEASE.**—If the payment in value or amount is calculated from a point away from the lease—

“(i) the payment shall be adjusted for quality and location differentials; and

“(ii) the lessee shall be allowed reimbursements at a reasonable commercial rate for transportation (including transportation to the point where the production is put in marketable condition), marketing, processing, and other services beyond the lease through the point of sale, other disposition, or delivery;”.

SEC. 404. INDIAN LAND.

This title shall not apply with respect to Indian land.

TITLE V—ROYALTY REINVESTMENT IN AMERICA

SEC. 501. ROYALTY INCENTIVE PROGRAM.

(a) **IN GENERAL.**—To encourage exploration and development expenditures on Federal land and the outer Continental Shelf for the development of oil and gas resources when the cash price of West Texas Intermediate crude oil, as posted on the Dow Jones Commodities Index chart is less than \$18 per barrel for 90 consecutive pricing days or when natural gas prices as delivered at Henry Hub, Louisiana, are less than \$2.30 per million British thermal units for 90 consecutive days, the Secretary shall allow a credit against the payment of royalties on Federal oil production and gas production, respectively, in an amount equal to 20 percent of the capital expenditures made on exploration and development activities on Federal oil and gas leases.

(b) **NO CREDITING AGAINST ONSHORE FEDERAL ROYALTY OBLIGATIONS.**—In no case shall such capital expenditures made on Outer Continental Shelf leases be credited against onshore Federal royalty obligations.

SEC. 502. MARGINAL WELL PRODUCTION INCENTIVES.

To enhance the economics of marginal oil and gas production by increasing the ultimate recovery from marginal wells when the cash price of West Texas Intermediate crude oil, as posted on the Dow Jones Commodities Index chart is less than \$18 per barrel for 90 consecutive pricing days or when natural gas prices are delivered at Henry Hub, Louisiana, are less than \$2.30 per million British thermal units for 90 consecutive days, the Secretary shall reduce the royalty rate as production declines for—

(1) onshore oil wells producing less than 30 barrels per day;

(2) onshore gas wells producing less than 120 million British thermal units per day;

(3) offshore oil well producing less than 300 barrels of oil per day; and

(4) offshore gas wells producing less than 1,200 million British thermal units per day.

SEC. 503. SUSPENSION OF PRODUCTION ON OIL AND GAS OPERATIONS.

(a) **IN GENERAL.**—Any person operating an oil well under a lease issued under the Act of February 25, 1920 (commonly known as the “Mineral Leasing Act”) (30 U.S.C. 181 et seq.) or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) may submit a notice to the Secretary of the Interior of suspension of operation and production at the well.

(b) **PRODUCTION QUANTITIES NOT A FACTOR.**—A notice under subsection (a) may be submitted without regard to per day production quantities at the well and without regard to the requirements of subsection (a) of section 3103.4-4 of title 43 of the Code of Federal Regulations (or any successor regulation) respecting the granting of such relief, except that the notice shall be submitted to an office in the Department of the Interior designated by the Secretary of the Interior.

(c) **PERIOD OF RELIEF.**—On submission of a notice under subsection (a) for an oil well, the operator of the well may suspend operation and production at the well for a period beginning on the date of submission of the notice and ending on the later of—

(1) the date that is 2 years after the date on which the suspension of operation and production commences; or

(2) the date on which the cash price of West Texas Intermediate crude oil, as posted on

the Dow Jones Commodities Index chart is greater than \$15 per barrel for 90 consecutive pricing days.

S. 1050

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Security Tax Policy Act of 1999”.

SEC. 2. ELIMINATION OF CERTAIN AMT PREFERENCES FOR OIL AND GAS ASSETS.

(a) **DEPLETION.**—Section 57(a)(1) of the Internal Revenue Code of 1986 (relating to depletion) is amended by striking the second sentence and inserting the following: “This paragraph shall not apply to any deduction for depletion computed in accordance with section 613A.”

(b) **INTANGIBLE DRILLING COSTS.**—Section 57(a)(2)(E) of the Internal Revenue Code of 1986 (relating to exception for independent producers) is amended to read as follows:

“(E) **TERMINATION OF APPLICATION TO OIL AND GAS PROPERTIES.**—In the case of any taxable year beginning after December 31, 1998, this paragraph shall not apply in the case of any oil or gas property.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 3. DEPRECIATION ADJUSTMENT NOT TO APPLY TO OIL AND GAS ASSETS.

(a) **IN GENERAL.**—Subparagraph (B) of section 56(a)(1) of the Internal Revenue Code of 1986 (relating to depreciation adjustments) is amended to read as follows:

“(B) **EXCEPTIONS.**—This paragraph shall not apply to—

“(i) property described in paragraph (1), (2), (3), or (4) of section 168(f), or

“(ii) property used in the active conduct of the trade or business of exploring for, extracting, developing, or gathering crude oil or natural gas.”

(b) **DEPRECIATION ADJUSTMENT FOR PURPOSES OF ADJUSTED CURRENT EARNINGS.**—Paragraph (4)(A) of section 56(g) of such Code (relating to adjustments based on adjusted current earnings) is amended by adding at the end the following new clause:

“(vi) **OIL AND GAS PROPERTY.**—In the case of property used in the active conduct of the trade or business of exploring for, extracting, developing, or gathering crude oil or natural gas, the amount allowable as depreciation or amortization with respect to such property shall be determined in the same manner as for purposes of computing the regular tax.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 4. REPEAL CERTAIN ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS RELATING TO OIL AND GAS ASSETS.

(a) **INTANGIBLE DRILLING COSTS.**—Clause (i) of section 56(g)(4)(D) of the Internal Revenue Code of 1986 (relating to certain other earnings and profits adjustments) is amended by striking the second sentence and inserting the following: “In the case of any oil or gas well, this clause shall not apply to amounts paid or incurred in taxable years beginning after December 31, 1998.”

(b) **DEPLETION.**—Clause (ii) of section 56(g)(4)(F) of the Internal Revenue Code of 1986 (relating to depletion) is amended to read as follows:

“(ii) **EXCEPTION FOR OIL AND GAS WELLS.**—In the case of any taxable year beginning after December 31, 1998, clause (i) (and subparagraph (C)(i)) shall not apply to any deduction for depletion computed in accordance with section 613A.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 5. ENHANCED OIL RECOVERY CREDIT AND CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE ALLOWED AGAINST MINIMUM TAX.

(a) **ENHANCED OIL RECOVERY CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.**—

(1) **ALLOWING CREDIT AGAINST MINIMUM TAX.**—Subsection (c) of section 38 of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) **SPECIAL RULES FOR ENHANCED OIL RECOVERY CREDIT.**—

“(A) **IN GENERAL.**—In the case of the enhanced oil recovery credit—

“(i) this section and section 39 shall be applied separately with respect to the credit, and

“(ii) in applying paragraph (1) to the credit—

“(I) subparagraphs (A) and (B) thereof shall not apply, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the enhanced oil recovery credit).

“(B) **ENHANCED OIL RECOVERY CREDIT.**—For purposes of this subsection, the term ‘enhanced oil recovery credit’ means the credit allowable under subsection (a) by reason of section 43(a).”.

(2) **CONFORMING AMENDMENT.**—Subclause (II) of section 38(c)(2)(A)(ii) of such Code is amended by inserting “or the enhanced oil recovery credit” after “employment credit”.

(b) **CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.**—

(1) **ALLOWING CREDIT AGAINST MINIMUM TAX.**—Section 29(b)(6) of the Internal Revenue Code of 1986 is amended to read as follows:

“(6) **APPLICATION WITH OTHER CREDITS.**—The credit allowed by subsection (a) for any taxable year shall not exceed—

“(A) the regular tax for the taxable year and the tax imposed by section 55, reduced by

“(B) the sum of the credits allowable under subpart A and section 27.”

(2) **CONFORMING AMENDMENTS.**—

(A) Section 53(d)(1)(B)(iii) of such Code is amended by inserting “as in effect on the date of the enactment of the Energy Security Tax Policy Act of 1999,” after “29(b)(6)(B).”.

(B) Section 55(c)(2) of such Code is amended by striking “29(b)(6).”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 6. TAX CREDIT FOR MARGINAL DOMESTIC OIL AND NATURAL GAS WELL PRODUCTION.

(a) **CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.**—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business credits) is amended by adding at the end the following new section:

“SEC. 45D. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

“(a) **GENERAL RULE.**—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

“(1) the credit amount, and

“(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

“(b) **CREDIT AMOUNT.**—For purposes of this section—

“(1) **IN GENERAL.**—The credit amount is—

“(A) \$3 per barrel of qualified crude oil production, and

“(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

“(2) **REDUCTION AS OIL AND GAS PRICES INCREASE.**—

“(A) **IN GENERAL.**—The \$3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

“(i) the excess (if any) of the applicable reference price over \$14 (\$1.56 for qualified natural gas production), bears to

“(ii) \$3 (\$0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price for the calendar year preceding the calendar year in which the taxable year begins.

“(B) **INFLATION ADJUSTMENT.**—In the case of any taxable year beginning in a calendar year after 2000, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ‘1999’ for ‘1990’).

“(C) **REFERENCE PRICE.**—For purposes of this paragraph, the term ‘reference price’ means, with respect to any calendar year—

“(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

“(ii) in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

“(c) **QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.**—For purposes of this section—

“(1) **IN GENERAL.**—The terms ‘qualified crude oil production’ and ‘qualified natural gas production’ mean domestic crude oil or natural gas which is produced from a marginal well.

“(2) **LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.**—

“(A) **IN GENERAL.**—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

“(B) **PROPORTIONATE REDUCTIONS.**—

“(i) **SHORT TAXABLE YEARS.**—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

“(ii) **WELLS NOT IN PRODUCTION ENTIRE YEAR.**—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

“(3) **DEFINITIONS.**—

“(A) **MARGINAL WELL.**—The term ‘marginal well’ means a domestic well—

“(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

“(ii) which, during the taxable year—

“(I) has average daily production of not more than 25 barrel equivalents, and

“(II) produces water at a rate not less than 95 percent of total well effluent.

“(B) **CRUDE OIL, ETC.**—The terms ‘crude oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have the meanings given such terms by section 613A(e).

“(C) **BARREL EQUIVALENT.**—The term ‘barrel equivalent’ means, with respect to natural gas, a conversion ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

“(d) **OTHER RULES.**—

“(1) **PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.**—In the case of a marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

“(2) **OPERATING INTEREST REQUIRED.**—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

“(3) **PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.**—In the case of production from a marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.”

(b) **CREDIT TREATED AS BUSINESS CREDIT.**—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking “plus” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, plus”, and by adding at the end the following new paragraph:

“(13) the marginal oil and gas well production credit determined under section 45D(a).”.

(c) **CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.**—

(1) **IN GENERAL.**—Subsection (c) of section 38 of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax), as amended by section 5(a)(1), is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) **SPECIAL RULES FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.**—

“(A) **IN GENERAL.**—In the case of the marginal oil and gas well production credit—

“(i) this section and section 39 shall be applied separately with respect to the credit, and

“(ii) in applying paragraph (1) to the credit—

“(I) subparagraphs (A) and (B) thereof shall not apply, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the marginal oil and gas well production credit).

“(B) **MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.**—For purposes of this subsection, the term ‘marginal oil and gas well production credit’ means the credit allowable under subsection (a) by reason of section 45D(a).”.

(2) **CONFORMING AMENDMENTS.**—

(A) Subclause (II) of section 38(c)(2)(A)(ii) of such Code, as amended by section 5(a)(2), is amended by striking “or the enhanced oil

recovery credit" and inserting "the enhanced oil recovery credit, or the marginal oil and gas well production credit".

(B) Subclause (II) of section 38(c)(3)(A)(ii) of such Code, as added by section 5(a)(1), is amended by inserting "or the marginal oil and gas well production credit" after "recovery credit".

(d) COORDINATION WITH SECTION 29.—Section 29(d) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(9) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) with respect to production from any marginal well (as defined in section 45D(c)(3)(A)) if the taxpayer elects to not have this section apply to such well."

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"45D. Credit for producing oil and gas from marginal wells."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years ending after the date of the enactment of this Act.

SEC. 7. ALLOWANCE OF ADDITIONAL ENHANCED OIL RECOVERY METHOD.

(a) IN GENERAL.—Clause (i) of section 43(c)(2)(A) of the Internal Revenue Code of 1986 (defining qualified enhanced oil recovery project) is amended to read as follows:

"(i) which involves the application (in accordance with sound engineering principles) of—

"(I) one or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered, or

"(II) a qualified horizontal drilling method which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered or lead to the discovery or delineation of previously undeveloped accumulations of crude oil."

(b) QUALIFIED HORIZONTAL DRILLING METHOD.—Section 43(c)(2) of the Internal Revenue Code of 1986 (relating to qualified enhanced oil recovery project) is amended by adding at the end the following new subparagraph:

"(C) QUALIFIED HORIZONTAL DRILLING METHOD.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified horizontal drilling method' means the drilling of a horizontal well in order to penetrate hydrocarbon bearing formations located north of latitude 54 degrees North.

"(ii) HORIZONTAL WELL.—The term 'horizontal well' means a well which is drilled—

"(I) at an inclination of at least 70 degrees off the vertical, and

"(II) for a distance in excess of 1,000 feet."

(c) CONFORMING AMENDMENT.—Clause (iii) of section 43(c)(2)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

"(iii) with respect to which—

"(I) in the case of a tertiary recovery method, the first injection of liquids, gases, or other matter commences after December 31, 1990, and

"(II) in the case of a qualified horizontal drilling method, the implementation of the method begins after December 31, 1998."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1998.

SEC. 8. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii) any natural gas gathering line, and"

(b) NATURAL GAS GATHERING LINE.—Subsection (i) of section 168 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(15) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead to the point at which such gas first reaches—

"(A) a gas processing plant,

"(B) an interconnection with an interstate natural-gas company (as defined in section 2(6) of the Natural Gas Act (15 U.S.C. 717a(6))), or

"(C) an interconnection with an intrastate transmission pipeline."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service before, on, or after the date of the enactment of this Act.

By Mr. MURKOWSKI (for himself and Mr. BINGAMAN (by request)):

S. 1051. A bill to amend the Energy Policy and Conservation Act to manage the Strategic Petroleum Reserve more effectively, and for other purposes; to the Committee on Energy and Natural Resources.

ENERGY POLICY AND CONSERVATION ACT AMENDMENTS

Mr. MURKOWSKI. Mr. President, pursuant to an executive communication referred to the Committee on Energy and Natural Resources, at the request of the Department of Energy, I introduce a bill cited as the "Energy Policy and Conservation Act Amendments." The bill would amend and extend certain authorities in the Energy and Policy Conservation Act which either have expired or will expire September 30, 1999. I would like to submit a copy of the transmittal letter and the text of the bill and ask that it be printed in the RECORD. I do this on behalf of myself and Senator BINGAMAN.

The Act was passed in 1975. Title I of the Act authorized the creation and maintenance of the Strategic Petroleum Reserve that would be used to mitigate shortages during an oil supply disruption. Title II contains authorities essential for meeting key United States obligations to the International Energy Agency.

The proposed legislation would extend the Strategic Petroleum Reserve and International Energy Program authorities to September 30, 2003. It would also delete or amend certain provisions which are outdated or unnecessary.

I ask unanimous consent that the bill and the executive communication which accompanied the proposal be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 1051

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Energy Policy and Conservation Act Amendments".

SEC. 2. Section 2 of the Energy Policy and Conservation Act (42 U.S.C. 6201) is amended—

(a) in paragraph (1) by striking "standby" and "subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and"; and

(b) by striking paragraphs (3) and (6).

SEC. 3. Section 3 of the Energy Policy and Conservation Act (42 U.S.C. 6202) is amended in paragraph (8) by inserting "or international" before "energy supply shortage".

SEC. 4. Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211–6251) is amended—

(a) by striking section 102 (42 U.S.C. 6211) and its heading;

(b) by striking section 104(b)(1);

(c) in section 105 (42 U.S.C. 6213)—

(1) by amending subsection (e) to read as follows—

"On or after December 31, 2000, the Secretary shall establish a program for setting the terms of joint bidding by any person for the right to explore for and develop crude oil, natural gas, natural gas liquids, sulphur, and other minerals located on Outer Continental Shelf lands. The program shall consider the goals of ensuring a fair return, encouraging timely and efficient resource development, and other goals as the Secretary deems appropriate. Conditions under which joint bidding will be permitted or restricted will be established through regulation."

(2) by adding subsection (f) to read as follows—

"(f) Subsections (a) through (d) of this section shall expire on the effective date of the program established by the Secretary pursuant to subsection (e)."

(d) by striking section 106 (42 U.S.C. 6214) and its heading;

(e) by amending section 151(b) (42 U.S.C. 6231) to read as follows:

"(b) It is the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products to reduce the impact of disruptions in supplies of petroleum products, to carry out obligations of the United States under the international energy program, and for other purposes as provided for in this Act."

(f) in section 152 (42 U.S.C. 6232)—

(1) by striking paragraphs (1), (3) and (7), and

(2) in paragraph (11) by striking "such term includes the Industrial Petroleum Reserve, the Early Storage Reserve, and the Regional Petroleum Reserve".

(g) by striking section 153 (42 U.S.C. 6233) and its heading;

(h) in section 154 (42 U.S.C. 6234)—

(1) by amending subsection (a) to read as follows:

"(a) A Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products shall be created pursuant to this part."

(2) by amending subsection (b) to read as follows:

"(b) The Secretary, in accordance with this part, shall exercise authority over the development, operation, and maintenance of the Reserve."; and

(3) by striking subsections (c), (d), and (e);

(i) by striking section 155 (42 U.S.C. 6235) and its heading;

(j) by striking section 156 (42 U.S.C. 6236) and its heading;

(k) by striking section 157 (42 U.S.C. 6237) and its heading;

(l) by striking section 158 (42 U.S.C. 6238) and its heading;

(m) by amending the heading for section 159 (42 U.S.C. 6239) to read, "Development, Operation, and Maintenance of the Reserve";

(n) in section 159 (42 U.S.C. 6239)—

(1) by striking subsections (a), (b), (c), (d), and (e);

(2) by striking subsections (f), to read as follows:

"(f) In order to develop, operate, or maintain the Strategic Petroleum Reserve, the Secretary may:

"(1) issue rules, regulations, or orders;

"(2) acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities;

"(3) construct, purchase, lease, or otherwise acquire storage and related facilities;

"(4) use, lease, maintain, sell or otherwise dispose of land or interests in land, or of storage and related facilities acquired under this part, under such terms and conditions as the Secretary considers necessary or appropriate;

"(5) acquire, subject to the provisions of section 160, by purchase, exchange, or otherwise, petroleum products for storage in the Strategic Petroleum Reserve;

"(6) store petroleum products in storage facilities owned and controlled by the United States or in storage facilities owned by others if those facilities are subject to audit by the United States;

"(7) execute any contracts necessary to develop, operate, or maintain the Strategic Petroleum Reserve;

"(8) bring an action, when the Secretary considers it necessary, in any court having jurisdiction over the proceedings, to acquire by condemnation any real or personal property, including facilities, temporary use of facilities, or other interests in land, together with any personal property located on or used with the land"; and

(3) in subsection (g)—

(A) by striking "implementation" and inserting "development"; and

(B) by striking "Plan";

(4) by striking subsections (h) and (i);

(5) by amending subsection (j) to read as follows:

"(j) If the Secretary determines expansion beyond 680,000,000 barrels of petroleum product inventory is appropriate, the Secretary shall submit a plan for expansion to the Congress."; and

(6) by amending subsection (l) to read as follows:

"(l) During a drawdown and sale of Strategic Petroleum Reserve petroleum products, the Secretary may issue implementing rules, regulations, or orders in accordance with section 553 of title 5, United States Code, without regard to rulemaking requirements in section 523 of this Act, and section 501 of the Department of Energy Organization Act (42 U.S.C. 7191).";

(o) in section 160 (42 U.S.C. 6240)—

(1) in subsection (a), by striking all before the dash and inserting the following—

"(a) The Secretary may acquire, place in storage, transport, or exchange";

(2) in subsection (a)(1) by striking all after "Federal lands";

(3) in subsection (b), by striking, "including the Early Storage Reserve and the Regional Petroleum Reserve" and by striking paragraph (2); and

(4) by striking subsections (c), (d), (e) and (g);

(p) in section 161 (42 U.S.C. 6241)—

(1) by striking "Distribution of the Reserve" in the title of this section and inserting "Sale of Petroleum Products";

(2) in subsection (a), by striking "draw-down and distribute" and inserting "draw down and sell petroleum products in";

(3) by striking subsections (b), (c), and (f);

(4) by amending subsection (d)(1) to read as follows:

"(d)(1) Drawdown and sale of petroleum products from the Strategic Petroleum Reserve may not be made unless the President has found drawdown and sale are required by a severe energy supply interruption or by obligations of the United States under the international energy program.";

(5) by amending subsection (e) to read as follows:

"(e)(1) The Secretary shall sell petroleum products withdrawn from the Strategic Petroleum Reserve at public sale to the highest qualified bidder in the amounts, for the period, and after a notice of sale considered appropriate by the Secretary, and without regard to Federal, State, or local regulations controlling sales of petroleum products.

"(2) The Secretary may cancel in whole or in part any offer to sell petroleum products as part of any drawdown and sale under this Section."; and

(6) in subsection (g)—

(A) by amending paragraph (1) to read as follows—

"(g)(1) The Secretary shall conduct a continuing evaluation of the drawdown and sales procedures. In the conduct of an evaluation, the Secretary is authorized to carry out a test drawdown and sale or exchange of petroleum products from the Reserve. Such a test drawdown and sale or exchange may not exceed 5,000,000 barrels of petroleum products.";

(B) by striking paragraphs (2) and (6A), striking the subparagraph designator "(B)" in paragraph (6), and by deleting the last sentence of paragraph (6);

(C) in paragraph (4), by striking "90" and inserting "95";

(D) in paragraph (5), by striking "draw-down and distribution" and inserting "test"; and

(E) in paragraph (8), by striking "draw-down and distribution" and inserting "test";

(7) in subsection (h)—

(A) in paragraph (1) by striking "distribute" and inserting "sell petroleum products from";

(B) in paragraph (2) by striking "In no case may the Reserve" and inserting "Petroleum products from the Reserve may not"; and

(C) in paragraph (3) by striking "distribution" each time it appears and inserting "sale";

(q) by striking section 164 (42 U.S.C. 6244) and its heading;

(r) by amending section 165 (42 U.S.C. 6245) and its heading to read as follows

"ANNUAL REPORT

"Sec. 165. The Secretary shall report annually to the President and the Congress on actions taken to implement this part. This report shall include—

"(1) the status of the physical capacity of the Reserve and the type and quantity of petroleum products in the Reserve;

"(2) an estimate of the schedule and cost to complete planned equipment upgrade or capital investment in the Reserve, including upgrades and investments carried out as part of operational maintenance or extension of life activities;

"(3) an identification of any life-limiting conditions or operational problems at any Reserve facility, and proposed remedial actions including an estimate of the schedule and cost of implementing those remedial actions;

"(4) a description of current withdrawal and distribution rates and capabilities, and an identification of any operational or other limitations on those rates and capabilities;

"(5) a listing of petroleum product acquisitions made in the preceding year and planned in the following year, including quantity, price, and type of petroleum;

"(6) A summary of the actions taken to develop, operate, and maintain the Reserve;

"(7) a summary of the financial status and financial transactions of the Strategic Petroleum Reserve and Strategic Petroleum Reserve Petroleum Accounts for the year.

"(8) a summary of expenses for the year, and the number of Federal and contractor employees;

"(9) the status of contracts for development, operation, maintenance, distribution, and other activities related to the implementation of this part;

"(10) a summary of foreign oil storage agreements and their implementation status;

"(11) any recommendations for supplemental legislation or policy or operational changes the Secretary considers necessary or appropriate to implement this part.";

(s) in section 166 (42 U.S.C. 6246) by striking "for fiscal year 1997.";

(t) in section 167 (42 U.S.C. 6247)—

(1) in subsection (b)—

(A) by inserting "for test sales of petroleum products from the Reserve," after "Strategic Petroleum Reserve," and by inserting "for" before "the drawdown" and inserting ", sale," after "drawdown";

(B) by striking paragraph (1); and

(C) in paragraph (2), by striking "after fiscal year 1982"; and

(2) by striking subsection (e);

(u) in section 171 (42 U.S.C. 6249)—

(1) by amending subsection (b)(2)(B) to read as follows:

"(B) the Secretary notifies each House of the Congress of the determination and identifies in the notification the location, type, and ownership of storage and related facilities proposed to be included, or the volume, type, and ownership of petroleum products proposed to be stored, in the Reserve, and an estimate of the proposed benefits.";

(2) in subsection (b)(3), by striking "distribution of" and inserting "sale of petroleum products from";

(v) in section 172 (42 U.S.C. 6249a), by striking subsections (a) and (b);

(w) by striking section 173 (42 U.S.C. 6249b) and its heading; and

(x) in section 181 (42 U.S.C. 6251), by striking "September 30, 1999" each time it appears and inserting "September 30, 2003".

SEC. 5. Title II of the energy Policy and Conservation Act (42 U.S.C. 6211–6251) is amended—

(a) by striking Part A (42 U.S.C. 6261 through 6264) and its heading;

(b) by adding at the end of section 256(h), "There are authorized to be appropriated for fiscal years 1999 through 2003, such sums as may be necessary."

(c) by striking Part C (42 U.S.C. 6281 through 6282) and its heading; and

(d) in section 281 (42 U.S.C. 6285), by striking "September 30, 1999" each time it appears and inserting "September 30, 2003".

SEC. 6. The Table of Contents for the Energy Policy and Conservation Act is amended—

(a) by striking the items relating to sections 102, 106, 153, 155, 156, 157, 158, and 164;

(b) by amending the item relating to section 159 to read as follows: "Development, Operation, and maintenance of the Reserve.";

(c) by amending the item relating to section 161 to read as follows: "Drawdown and Sale of Petroleum Products";

(d) by amending the item relating to section 165 to read as follows: "Annual Report"

THE SECRETARY OF ENERGY,
Washington, DC, March 15, 1999.

Hon. AL GORE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a legislative proposal cited as the "Energy Policy and Conservation Act Amendments." This proposal would amend and extend certain authorities in the Energy Policy and Conservation Act (Act) which either have expired or will expire September 30, 1999. Not all sections of the current act are proposed for extension.

The Act was passed in 1975. Title I authorized the creation and maintenance of the Strategic Petroleum Reserve that would mitigate shortages during an oil supply disruption. Title II contains authorities essential for meeting key United States obligations to the International Energy Agency. This is our method of coordinating energy emergency response programs with other countries. These programs are currently authorized until September 30, 1999.

The proposed legislation would extend the Strategic Petroleum Reserve and International Energy Program authorities to September 30, 2003. It would also amend or delete certain provisions which are outdated or unnecessary.

The proposed legislation and a sectional analysis are enclosed.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President. We look forward to working with the Congress toward enactment of this legislation.

Sincerely,

BILL RICHARDSON.

By Mr. MURKOWSKI (for himself, Mr. AKAKA, and Mr. BINGAMAN):

S. 1052. A bill to implement further the Act (Public Law 94-241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes; to the Committee on Energy and Natural Resources.

NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

• Mr. MURKOWSKI. Mr. President, today I am introducing a modified version of legislation that the Committee on Energy and Natural Resources reported to the Senate last Congress to address various problems that have arisen in the Commonwealth of the Northern Mariana Islands. As reported by the Committee last Congress, the legislation would have created an industry committee to establish minimum wage levels similar to committees that had been created for other territories and that still exist for

American Samoa. The legislation would also have established a mechanism for the extension of federal immigration laws if the government of the Northern Marianas proved unable or unwilling to adopt and enforce an effective immigration system. The legislation that I am introducing today does not include any provisions dealing with wages. I continue to believe that an industry committee is preferable to outright extension of federal wage rates, but the Northern Marianas, the Administration, and some of my co-sponsors would prefer to have that debate on another vehicle.

Immigration, however, is at the heart of the problems facing the Northern Marianas. This legislation reflects the recommendation of the Committee on Energy and Natural Resources last Congress. What appears on the surface to be a prosperous diversified economy in the Northern Marianas, is in fact a far more fragile economy that is becoming ever more dependent on a system of imported labor. Unemployment among US residents remains high and the public sector is rapidly becoming the only source of employment for US citizens residing in the Marianas. The public sector workforce has doubled over the past several years and payroll is the largest expense of the government. The recent downturn in tourism as a result of economic problems in Asia has only served to aggravate the situation in the Marianas, increase the pressures on public sector employment, and tighten the dependence of the Marianas on imported labor for the private sector, mainly garment manufacturing.

The Commonwealth of the Northern Mariana Islands (CNMI) is a three hundred mile archipelago consisting of fourteen islands stretching north of Guam. The largest inhabited islands are Saipan, Rota, and Tinian. Magellan landed at Saipan in 1521 and the area was controlled by Spain until the end of the Spanish American War. Guam, the southernmost of the Marianas, was ceded to the United States following the Spanish-American War and the balance sold to Germany together with the remainder of Spain's possessions in the Caroline and Marshall Islands.

Japan seized the area during World War I and became the mandatory power under a League of Nations Mandate for Germany's possessions north of the equator on December 17, 1920. By the 1930's Japan had developed major portions of the area and begun to fortify the islands. Guam was invaded by Japanese forces from Saipan in 1941. The Marianas were secured after heavy fighting in 1944 and the bases on Tinian were used for the invasion of Okinawa and for raids on Japan, including the nuclear missions on Hiroshima and Nagasaki. In 1947, the Mandated islands were placed under the United Nations trusteeship system as the Trust Territory of the Pacific Islands (TTPI) and

the United States was appointed as the Administering Authority. The area was divided into six administrative districts with the headquarters located in Hawaii and then in Guam. The TTPI was the only "strategic" trusteeship with review by the Security Council rather than the General Assembly of the United Nations. The Navy administered the Trusteeship, together with Guam, until 1951, when administrative jurisdiction was transferred to the Department of the Interior. The Northern Marianas, however, were returned to Navy jurisdiction from 1952-1962. In 1963, administrative headquarters were moved to Saipan.

With the establishment of the Congress of Micronesia in 1965, efforts to reach an agreement on the future political status of the area began. Attempts to maintain a political unity within the TTPI were unsuccessful, and each of the administrative districts (Kosrae eventually separated from Pohnpei District in the Carolines) sought to retain its separate identity. Four of the districts became the Federated States of Micronesia, the Marshalls became the Republic of the Marshall Islands, and Palau became the Republic of Palau, all sovereign countries in free association with the United States under Compacts of Free Association. The Marianas had sought reunification with Guam and US territorial status from the beginning of the Trusteeship. Separate negotiations with the Marianas began in December, 1972 and concluded in 1975.

In 1976, Congress approved a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (PL 94-241). The Covenant had been approved in a United Nations observed plebiscite in the Northern Mariana Islands and formed the basis for the termination of the United Nations Trusteeship with respect to the Northern Mariana Islands in 1986 together with the Republic of the Marshall Islands and the Federated States of Micronesia. Prior to termination, those provisions of the Covenant that were not inconsistent with the status of the area (such as extension of US sovereignty) were made applicable by the US as Administering Authority. Upon termination of the Trusteeship, the CNMI became a territory of the United States and its residents became United States citizens. Under the terms of the Covenant certain federal laws would be inapplicable in the CNMI, including minimum wage to take into consideration the relative economic situation of the islands and their relation to other east Asian countries.

Although the population of the CNMI was only 15,000 people in 1976 when the Covenant went into effect, the population now exceeds 60,000 and US citizens are a minority. The resident population is probably about 24,000 with

about 28,000 alien workers and estimates of at least 10,000 illegal aliens. Permits for non-resident workers were reported at 22,500 for 1994, the largest category being for manufacturing. Tourism has climbed from about 230,000 visitors in 1987 to almost 600,000 in 1994. Total revenues for the CNMI for 1993 were estimated at \$157 million.

The 1995 census statistics from the Commonwealth list unemployment at 7.1%, with CNMI born at 14.2% and Asia born at 4.5%. Since no guest workers should be on island without jobs, the 4.5% suggests a serious problem in the CNMI. The 14.2% local unemployment suggests that either guest workers are taking jobs from local residents, or the wage rates or types of occupation are not adequate to attract local workers.

The Covenant established a unique system in the CNMI under which the local government controlled immigration and minimum wage levels and also had the benefit of duty and quota free entry of manufactured goods under the provisions of General Note 3(a) of the Harmonized Tariff Schedules. The Section by Section analysis of the Committee Report on the Covenant provides in part:

Section 503.—This section deals with certain laws of the United States which are not now applicable to the Northern Mariana Islands and provides that they will remain inapplicable except in the manner and to the extent that they are made applicable by specific legislation enacted after the termination of the Trusteeship. These laws are:

The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those problems. . . . It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands. . . .

The same consideration applies to the introduction of the Minimum Wage Laws. (Subsection (c)). Congress realizes that the special conditions prevailing in the various territories require different treatment. . . . In these circumstances, it would be inappropriate to introduce the Act to the Northern Mariana Islands without preliminary studies. There is nothing which would prevent the Northern Mariana Islands from enacting their own Minimum Wage Legislation. Moreover, as set forth in section 502(b), the activities of the United States and its contractors in the Northern Mariana Islands will be subject to existing pertinent Federal Wages and Hours Legislation. (S. Rept. 94-433, pp. 77-78)

The Committee anticipated that by the termination of the Trusteeship, the federal government would have found some way of preventing a large influx of persons into the Marianas, recognizing the Constitutional limitations on restrictions on travel. In part, the Covenant attempted to deal with that possibility by enacting a restraint on land alienation for twenty-five years, subject to extension by the CNMI. The minimum wage issue was more dif-

ficult, especially in light of the Committee's experience in the Pacific. The extension of minimum wage to Kwajalein was a proximate cause of the overcrowding at Ebeye in the Kwajalein Atoll as hundreds of Marshallese moved to the small island in hope of obtaining a job at the Missile Range. The CNMI, at the time the Covenant was negotiated, had a limited private sector economy and was under the overall Trust Territory minimum wage, which was considerably lower than the federal minimum wage. The Marianas also had been a closed security area until the early 1960's, further limiting development. Congress fully expected that the Marianas would establish its own schedule and would, within a reasonable time frame, raise minimum wages as the local economy grew. At the time of the Covenant, Guam's local minimum wage exceeded the federal levels, and the Committee anticipated that the Northern Marianas would mirror the history of Guam.

Shortly after the Covenant went into effect, the CNMI began to experience a growth in tourism and a need for workers in both the tourist and construction industries. Interest also began to grow in the possibility of textile production. Initial interest was in production of sweaters made of cotton, wool and synthetic fibers. The CNMI, like the other territories, except for Puerto Rico, is outside the U.S. customs territory but can import products manufactured in the territory duty free provided that the products meet a certain value added amount under General Note 3(a) of the Tariff Schedules (then called Headnote 3(a)). The first company began operation in October, 1983 and within a year was joined by two other companies. Total employment for the three firms was 250 of which 100 were local residents. At the time, Guam had a single firm, Sigallo-Pac, also engaged in sweater manufacture with 275 workers, all of whom, however, were U.S. citizens.

Attempts by territories to develop textile or apparel industries have traditionally met resistance from Stateside industries. The use of alien labor in the CNMI intensified that concern, and efforts began in 1984 to sharply cut back or eliminate the availability of duty free treatment for the territories. The concerns also complicated Senate consideration of the Compacts of Free Association in 1985 and led to a delay of several months in floor consideration when some Members sought to attach textile legislation to the Compact legislation. By 1986, conditions led the Assistant Secretary, Territorial and International Affairs of the Department of the Interior to write the Governor on the situation and that "[w]ithout timely and effective action to reverse the current situation, I must consider proposing Congressional

actment of U.S. Immigration and Naturalization requirements for the NMI".

By 1990, the population of the CNMI was estimated at 43,345 of whom only 16,752 had been born in the CNMI. Of the 26,593 born elsewhere, 2,491 had entered from 1980-1984, 2,591 had entered in 1985 or 1986, 6,438 had entered in 1987 or 1988, and 12,955 had entered in 1989 or 1990. Of the population in 1990, 21,332 were classified as Asian. The labor force (all persons 16+ years including temporary alien labor) grew from 9,599 in 1980 to 32,522 in 1990. Manufacturing grew from 1.9% of the workforce in 1980 to 21.9% in 1990, only slightly behind construction which grew from 16.8% to 22.2% in the same time frame. The construction numbers track a major increase in hotel construction. At the same time, increases in the minimum wage were halted although wages paid to U.S. citizens (mainly public sector and management) exceeded federal levels.

In 1993, in response to Congressional concerns, the CNMI stated that it proposed to enact legislation to raise the wage rates from \$2.15 to federal levels by stages and that legislation would be enacted to prevent any abuse of workers.

Repeated allegations of violations of applicable federal laws relating to worker health and safety, concerns with respect to immigration problems, including the admission of undesirable aliens, and reports of worker abuse, especially in the domestic and garment worker sectors, led to the inclusion of a \$7 million set aside in appropriations in 1994 to support federal agency presence in the CNMI. The Administration was not prepared to commit agency resources to the CNMI absent the funding, but with an agreement for reimbursement, the Department of the Interior reported to the Committee on April 24, 1995 that:

1) \$3 million would be used by the CNMI for a computerized immigration identification and tracking system and for local projects;

2) \$2.2 million would be used by the Department of Justice to strengthen law enforcement, including the hiring of an additional FBI agent and Assistant US Attorney;

3) \$1.6 million would be used by Labor for two senior investigators as well as for training; and

4) \$200,000 would be used by Treasury for assistance in investigating violations of federal law with respect to firearms, organized crime, and counterfeiting.

In addition, the report recommended that federal law be enacted to phase in the current CNMI minimum wage rates to the federal minimum wage level in 30 cent increments (as then provided by CNMI legislation), end mandatory assistance to the CNMI when the current agreement was fulfilled, continue annual support of federal agencies at a \$3

million/year level (which would include funding for a detention facility that meets federal standards), and possible extension of federal immigration laws.

During the 104th Congress, the Senate passed S. 638, legislation supported by the Administration, that in part would have enacted the phase in of the CNMI minimum wage rate to US levels in 30 cent increments. No action was taken by the House, and, in the interim, the CNMI delayed the scheduled increases and then instituted a limited increase of 30 cents/hour except for the garment and construction industries where the increase was limited to 15 cents/hour. The legislation also required the Commonwealth "to cooperate in the identification and, if necessary, exclusion or deportation from the Commonwealth of the Northern Mariana Islands of persons who represent security or law enforcement risks to the Commonwealth of the Northern Mariana Islands or the United States." (Section 4 of S. 638) At the same time that Congress began to consider legislation on minimum wage and immigration issues, concern over the commitment of federal agencies to administer and enforce those federal laws already applicable to the CNMI led the Committee to include a provision in S. 638 that the annual report on the law enforcement initiative also include: "(6) the reasons why Federal agencies are unable or unwilling to fully and effectively enforce Federal laws applicable within the Commonwealth of the Northern Mariana Islands unless such activities are funded by the Secretary of the Interior." (Section 3 of S. 638)

In February, 1996, I led a Committee trip to the CNMI. We met with local and federal officials as well as inspecting a garment factory and meeting with Bangladesh security guards who had not been paid and who were living in substandard conditions. Their living conditions were intolerable. There was no running water, no workable toilets, the shack—and that is being kind—was in deplorable condition. As I said at the time, this was a condition that should never exist on American soil. It existed in the shadow of the Hyatt Hotel.

I raised my concerns with the Governor and with other officials in Saipan. We were assured that corrective action would be taken. Those assurances, especially those dealing with minimum wages, seem to have disappeared as soon as our plane was airborne. As a result of the meetings and continued expressions of concern over conditions, the Committee held an oversight hearing on June 26, 1996 to review the situation in the CNMI. At the hearing, the acting Attorney General of the Commonwealth requested that the Committee delay any action on legislation until the Commonwealth could complete a study on minimum wage and promised that the study

would be completed by January. That timing would have enabled the Committee to revisit the issue in the April-May 1997 period after the Administration had transmitted its annual report on the law enforcement initiative. While the CNMI Study was not finally transmitted until April, the Administration did not transmit its annual report, which was due in April, until July. On May 30, 1997, the President wrote the Governor of the Northern Marianas that he was concerned over activities in the Commonwealth and had concluded that federal immigration, naturalization, and minimum wage laws should apply.

Given the reaction that followed the President's letter, I asked the Administration to provide a drafting service of the language needed to implement the recommendations in the annual report and informed the Governor of the Commonwealth of the request and that the Committee intended to consider the legislation after the Commonwealth had an opportunity to review it. The drafting service was not provided until October 6, 1997 and was introduced on October 8, 1997, shortly before the elections in the CNMI. The Committee deferred hearings so as not to intrude unnecessarily into local politics and to allow the CNMI an opportunity to review and comment on the legislation after the local elections.

The U.S. Commission on Immigration Reform conducted a site visit to the Northern Marianas in July 1997 and issued a report which, in general, supports the need to address immigration. The report, however, also raises some concerns with the extension of US immigration laws. The report found problems in the CNMI "ranging from bureaucratic inefficiencies to labor abuses to an unsustainable economic, social and political system that is antithetical to most American values" but "a willingness on the part of some CNMI officials and business leaders to address the various problems". The report expressed some concerns over the extension of federal immigration laws, but that absent the threat of federal extension, "the CNMI is unlikely on its own to correct the problems inherent in its immigration system". The report recommended that specific benchmarks for an effective immigration system be negotiated and that the "benchmarks should be codified in statute, with provision for immediate imposition of federal law if the benchmarks are not met within the prescribed time." Specifically the report recommended that "[s]hould the CNMI fail to negotiate expeditiously and in good faith, or renege on the negotiated agreements, we agree that imposition of federal law by Congress would be required." (Emphasis in original)

While the outright exception from the minimum wage provisions of federal law in the Covenant is an anom-

aly, so also was the direct phase in to federal levels contained in the legislation as transmitted by the Administration. Congress has generally recognized the different economic circumstances of the territories and provided for a "special industry committee". The objective of an industry committee is to set wage rates by industry "to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the [federal] minimum wage rate" (29 U.S.C. 208(a)). The committees may make classifications within industries. Such committees were established for Puerto Rico and the Virgin Islands in 1940 and continued until Congress provided for step increases in 1977 for the remaining covered industries. An industry committee has been applicable in American Samoa since 1956. In 1992, the Department of the Interior provided formal Administration opposition to legislation that would have extended federal minimum wage rates to Samoa stating that "[i]mposition of the United States mainland minimum wage on American Samoa would have a serious, perhaps devastating effect on the territorial economy and jobs". The industry committee for Samoa set rates for 1996 that ranged from \$2.45/hour for local government employees to \$3.75/hour for the subclass of stevedoring and lighterage. Wages for the canneries was set at \$3.10/hour.

While the economic situation of the CNMI is considerably different from that of American Samoa, it is not absolutely clear that all segments of all industries in the CNMI are capable of sustaining federal minimum wage rates. Unlike American Samoa, the minimum wage issue in the CNMI appears to involve only temporary non-immigrant workers. All U.S. citizens resident in the CNMI appear to be earning at or above federal minimum wage levels. The CNMI completed a minimum wage analysis in April 1997 by the HayGroup. The analysis recommended against a change in current wage rates for at least three years and planning to accommodate growth. An industry committee would be able to assess the merits of claims by individual industries and structure a system that takes into account the individual needs of particular industries or sub-classes.

As I stated earlier, I believe that an industry committee is the proper approach. I have not included the provision in this legislation due to the opposition of the Northern Marianas, the Administration, and several of my colleagues. The Northern Marianas believes that it can avoid becoming entangled in the federal minimum wage legislation pending in Congress. I don't share their belief, but this is their choice.

The Committee conducted a hearing on March 31, 1998 on S. 1275 and S. 1100,

similar legislation introduced by Senator AKAKA and others. The Committee heard from the Administration, the government of the CNMI, workers and representatives of the local industry, as well as public witnesses. At a business meeting of the Committee on May 20, 1998, the legislation was amended and then ordered to be favorably reported to the Senate. Unfortunately, the Senate did not take action on the measure prior to adjournment.

The portion of the Committee amendment that I am introducing today provides for full extension of the Immigration and Nationality Act contingent on the Attorney General finding that 1) the Northern Marianas does not possess the institutional capacity to administer an effective system of immigration control or 2) the Northern Marianas does not have a genuine commitment to enforce the system. Neither I nor the Committee question the commitment of the current administration of the Northern Marianas to attempt to rectify the problems that led to this legislation, but we are mindful that commitments have been made in the past and then ignored. We also recognized that the Commission on Immigration Reform and others have concluded that some of the problem is structural and that a local government simply may not have the capability to maintain an effective immigration program within our federal system. As a result, the Committee adopted a provision that will take effect without further Congressional action if the requisite findings are made. The Committee viewed this as a last opportunity for the local government and provided that the Attorney General must promptly issue standards so that the Marianas is on full notice of what will be required.

If, however, it does become necessary to extend federal law, the Committee also adopted amendments to the bill as introduced to ensure that those industries, especially construction, that depend on temporary workers for temporary jobs will have full access to alien labor as necessary. The Committee was mindful of the concern by the hotel industry over access to workers, and accordingly adopted a provision that would permit the transition provisions to be extended for additional five year periods as long as necessary. The Committee amendment required the Attorney General and the Secretary of Labor to consult with the Northern Marianas one year prior to the expiration of the transition period, and at 5-year intervals thereafter, to determine whether the provisions will continue to be needed. The Committee and I fully expect that any uncertainty be resolved in favor of the Northern Marianas. If the provisions are extended, a similar consultation will occur in the fourth year of the extension to decide if further extensions are warranted.

The Committee reluctantly adopted these provisions because it believes that conditions in the Northern Marianas leave no alternative. Extension of additional federal laws, however, will not resolve the problems if federal agencies do not maintain their present commitment to administration and enforcement of federal law. A continuation of local efforts by the present administration of the Northern Marianas will also be necessary.

Although the legislation contains the one-year grace period contained in the Committee amendment from last Congress, the one year has expired. The record of the Northern Marianas, and the status of local legislation, will determine whether and on what terms federal laws should be extended. The action earlier this year by the Northern Marianas to lift the moratorium on entry permits for new workers is particularly troubling.

There are legitimate questions concerning immigration and minimum wage. We should now have sufficient experience to assess whether the Marianas is capable of providing the pre-clearance for any persons who attempt to enter the Marianas. The Immigration Commission concluded that they are not capable of undertaking such prescreening and clearance because they do not have the resources of the federal government through the State Department. The United States routinely does prescreening in foreign countries as part of our visa process. The situation that I saw with the Bangladesh workers should never have happened and would not have happened had federal immigration laws and procedures been in place and enforced. Reports of other workers who arrive only to find no jobs would also never happen. A particularly troubling aspect of the current situation in the Northern Marianas is the level of unemployment among guest workers. There should be no unemployment among the guest workers. If there are no jobs, then the workers should not be present. These are legitimate immigration related issues. They do not necessarily lead to a federal takeover, but they are legitimate issues and it serves no purpose to distort history and pretend that the current situation was the goal of the Covenant negotiators. That does not make the Marianas corrupt, but if accurate, it points out that this Committee was correct when it stated that we would need to make changes in the immigration laws prior to termination of the Trusteeship so that they could be extended to the Marianas.

The report of the Immigration Commission also raises legitimate questions about the availability of asylum and the lack of civil rights since the Marianas is using temporary workers for permanent jobs, thereby denying workers the rights they would have if admitted into the US with a right of

residency. That needs to be addressed. The Commission also expresses some grave concerns over outright extension of the Immigration laws and questions the willingness or commitment of the INS to devote the personnel or resources to effective administration. While I fully expect the INS to support the Administration position in our hearings on this legislation, I also share that concern. We do not need to make a bad local problem an equally bad federal one.

I also think that the focus on the garment industry by the Administration and most of the critics of the situation in the Northern Marianas is somewhat shortsighted. The advantages that the Marianas can provide garment manufacturers in terms of duty and quota free treatment expire with the implementation of the multi-fibre agreement. The suggestion in the Administration's task force report last year that these jobs will move to the mainland if the garment industry is curtailed in the Marianas is simply wrong. Those jobs in all likelihood are temporary until they move back to the Asian mainland in about five years. That, by the way, is well within the transition period contemplated under the legislation submitted by the Administration last year. The legislation will actually have little or no effect on the industry that the Administration is targeting. I should also note that the Bank of Hawaii, in its economic study also concluded that the garment industry in the Marianas was not likely to last. Other studies have also come to that conclusion. The Administration has made it clear that they hope the effect of this legislation will be the end of the garment industry in the Marianas. Given both the studies and the Administration's objective, I do have a question about why the President's budget claims about \$187 million per year in additional revenues from the enactment of the amendments to General Note 3(a). If there is no industry, there will be no imports, and there will be no revenues.

The problem is that the Administration does not seem to comprehend that the Marianas is the United States. It is not a foreign country. The failure of the Administration to enforce federal laws has led to a climate conducive to worker abuse and to some sense within the Marianas that federal laws will not be applied. On the other side, a large population of workers without full civil rights also offers the opportunity for people to exploit the situation. I am not happy with either side of this debate. The cries for federal takeover are too strident and too partisan to ring true. The defense is simply unacceptable. In the middle are the workers who apparently no one cares about, except for their value in being put on display in the media.

Complicating consideration of this legislation, however, is the Administration's somewhat lackluster response to the flood of illegal entries into Guam from China. These individuals are being smuggled into Guam by boat. Most of the aliens come from the China mainland from Fujian Province, but some have sought entry from the Northern Marianas. So far this year, over 800 illegal aliens have been apprehended either in Guam or attempting to reach Guam.

Earlier this year I met with the Governor of Guam. He expressed his frustration with the Immigration and Naturalization Service for diverting revenues from Guam to the mainland. The result was that Guam had to assume the costs of incarceration for these aliens. An article in the *Pacific Daily News* on Sunday May 9 suggested that as many as 2,000 illegal aliens may already be in Guam. Only after the situation became even worse and the national media began to draw attention to what was happening, did the White House become involved. As a result of that involvement, the Administration has finally begun to pay some attention and is beginning to dedicate resources to the interdiction of these aliens. The Administration plans to send three more Coast Guard vessels and two C-130 aircraft to Guam and apparently will reimburse the local government for its expenditures on behalf of federal agencies. That response was too long in coming. Parenthetically, I would note that INS did not care about extending immigration laws to the Northern Marianas until after the *Readers Digest* and other publications began to question the Administration's commitment to human rights and the White House became concerned with its image.

A continuing concern for my Committee over the years has been the reluctance of Executive Branch agencies, specifically the INS, to treat the Marianas as part of the United States. Up until last Congress, the INS resisted any attempt to extend the immigration laws to the Northern Mariana Islands. That resistance was not based on policy grounds or from a belief that the Northern Marianas was operating an effective immigration system, but from the narrow administrative concern of not wanting to dedicate the personnel and resources. I must admit that I have some apprehension over how solid the recent conversion of the INS is. Last Congress, they testified in support of the Administration's proposal to extend the immigration laws. They promised the Committee that they would dedicate the necessary resources to ensure successful implementation. Now we see that they are unwilling to dedicate the resources in Guam, where federal immigration laws already apply, until they are directed to do so by the White House. The situation in the Mar-

ianas may be sufficiently problematic that we will have to go forward with the legislation despite my reservations. I intend to closely examine the INS when we schedule hearings on this legislation.

I also am concerned over the Administration's decision to use the Northern Marianas as a holding area for illegal aliens who are intercepted at sea. On May 8, the Coast Guard intercepted a Taiwanese vessel with 80 people suspected of trying to illegally enter Guam. The vessel was escorted to Tinian in the Northern Mariana Islands. Apparently the Administration made that decision because the federal immigration laws do not apply in the Marianas and that makes it easier to repatriate the aliens and prevent them from claiming asylum. If we extend the immigration laws, as one portion of the Administration wants, we will frustrate the interdiction and repatriation program being pursued by another portion of the Administration. The Committee will need to sort this out during our hearings. I also will look forward to an explanation of why the use of Tinian in the Northern Marianas avoids claims of asylum. The asylum requirements are matters of international obligation and federal policy. In fact, the failure of the Northern Marianas to deal with asylum issues as a matter of local legislation was one of the arguments that the Administration made in support of the extension of federal legislation. That contradiction will also need to be explored. It appears from press reports that the Administration plans to consider claims of asylum, but given the peculiar situation of refugees from mainland China, it will be interesting to see how those claims are processed.

I am also aware of suggestions in Guam that we need to amend the immigration laws to prevent the claim of asylum on Guam. Congressman Underwood has introduced legislation to that effect already. I think we need to be very careful in considering legislation to extend the immigration laws to the Northern Marianas that we do not create an even larger problem than the one we already have in Guam. Guam is a single island, about 33 miles by 12 miles. The Commonwealth of the Northern Mariana Islands is an archipelago of fourteen islands three hundred miles long. If we can not adequately patrol Guam, how are we going to patrol the entire Marianas? That also is a question that will need to be answered before we move this legislation.

Before the opponents of this legislation start their celebration, I want to repeat that I find the conditions and circumstances in the Northern Marianas to be unacceptable. I have serious concerns over this legislation, but something needs to be done. I am willing to consider modifications to the

legislation. Last year I included provisions to guarantee both construction and tourism sectors access to sufficient workers, and I am willing to revisit those provisions or consider other changes to support the economy of the Northern Marianas. At some point, however, the Marianas needs to take a hard look at the structure of their economy. They can not continue indefinitely with the public sector being the only source of employment for US residents. They need to provide a future for their children. The federal government needs to ensure that federal laws are enforced and that they are applied in a manner that recognizes the unique circumstances of this island community. I support as much local authority and control as is possible. There are certain functions, however, that only the federal government can effectively perform. There are also certain rights that every individual who works and resides in the United States should expect to be guaranteed. This legislation will provide an opportunity for the Committee to see that those responsibilities are performed and that those rights are protected.●

ADDITIONAL COSPONSORS

S. 38

At the request of Mr. CAMPBELL, the names of the Senator from Pennsylvania [Mr. SANTORUM] and the Senator from Kentucky [Mr. BUNNING] were added as cosponsors of S. 38, a bill to amend the Internal Revenue Code of 1986 to phase out the estate and gift taxes over a 10-year period.

S. 39

At the request of Mr. STEVENS, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above the call of duty, and for other purposes.

S. 61

At the request of Mr. DEWINE, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 219

At the request of Mr. MOYNIHAN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 219, a bill to authorize appropriations for the United States Customs Service.

S. 313

At the request of Mr. SHELBY, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 313, a bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1999, and for other purposes.